SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 51

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

TRAVELERS HEALTH ASSOCIATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX

IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

TRAVELERS HEALTH ASSOCIATION, *Petitioner*,

vs

FEDERAL TRADE COMMISSION, *Respondent*.

Petition of Travelers Health Association for Review of Order of Federal Trade Commission—Filed March 4, 1957

To The Honorable Judges Of The
United States Court Of Appeals
For The Eighth Circuit:

Your petitioner, Travelers Health Association, a corporation organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its principal place of business located at Omaha, Nebraska, respectfully presents its petition for a review of the Order of the Federal Trade Commission bearing date of December 20, 1956 and served January 7, 1957, Docket No. 6252, wherein Petitioner was ordered to cease and desist from certain practices allegedly in violation of the Federal Trade Commission Act of 1914 as amended. (Title 15, U.S.C.A., Sec. 41, et seq.) This petition is filed in this Court pursuant to Section 5(c), Title 15, U.S.C.A., Section 45(c).

A complaint was filed by Federal Trade Commission against said Travelers Health Association alleging that latter engaged in false and misleading advertising practices in the promotion and sale of insurance covering disability caused by sickness. Travelers Health Association answered absolutely denying jurisdiction of Federal Trade Commission for reasons hereinafter set forth, and absolutely denying that its advertising was or is false or fraudulent.

2 The Order above referred to is attached to and made a part of the so-called Findings as to the Facts and Conclusions to the effect that the Federal Trade Commission has jurisdiction over all of Petitioner's acts and practices alleged in the Complaint to be unlawful, and that the acts and practices of Petitioner are to the prejudice and injury of the public and constitute unfair and deceptive acts

or practices within the intent and meaning of the Federal Trade Commission Act.

Petitioner respectfully represents:

1. That the Federal Trade Commission had no jurisdiction to file the Complaint here involved or to enter the Order complained of and that all of the acts and actions of the Federal Trade Commission in this regard and all of the orders entered by it, including the final order against which this petition for review is directed, are wholly outside of the jurisdiction of the Federal Trade Commission and that the Federal Trade Commission has no jurisdiction of the subject matter hereof because by the Act of Congress of March 9, 1945, Chapter 20, Sections 1 to 5, both inclusive, 59 Stat. 33 and 34 as amended by Act of July 25, 1947, Chapter 326, 61 Stat. 448, now carried in the United States Code Annotated, Title 15, Sections 1011 to 1015, both inclusive, known as the McCarran Act, also known as Public Law 15, Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several states; and provided further that the business of insurance and every person engaged therein shall be subject to the laws of the several states which relate to the regulation or taxation of such business; and provided further that no act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance or which imposes a fee or tax upon such business unless such Act specifically relates to the business of insurance with the proviso that after June 30, 1948, the Act of September 26, 1914, known as the Federal Trade Commission Act as amended shall be applicable to the business of insurance to the extent that such business is not regulated by State law. That in all of the States in which Petitioner transacts the business of insurance such insurance business is adequately and effectively regulated by State law.

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2. Finding of Fact No. 4 (Paragraph Four), as set out on pages 3 and 4 of the Findings as to the Facts, Conclusions and Order, is not supported or based upon any substantial

or credible evidence and is contrary to the undisputed evidence in this record.

3. Finding of Fact No. 5 (Paragraph Five) as set out on pages 4, 5 and 6 of the Findings as to the Facts, Conclusions and Order, is not supported or based upon any substantial or credible evidence and is contrary to the undisputed evidence in this record.

4. Finding of Fact No. 7 (Paragraph Seven) as set out on pages 6, 7 and 8 of the Findings as to the Facts, Conclusions and Order, is not supported or based upon any substantial or credible evidence and is contrary to the undisputed evidence in this record.

5. That the Federal Trade Commission's Conclusion No. 1, set out on page 8 of the Findings as to the Facts, Conclusions and Order, has no foundation in fact or law, the Federal Trade Commission having no jurisdiction of the subject matter of the Complaint.

6. That Petitioner not having disseminated any false or deceptive matter no public interest is involved in this proceeding as asserted in Conclusion No. 2 set out on page 8 of the Findings as to the Facts, Conclusions and Order.

7. That Conclusion No. 3, set out on page 8 of the Findings as to the Facts, Conclusions and Order, has no foundation either in fact or in law and is wholly unwarranted under the record in this case.

8. That Conclusion No. 4, set out on page 8 of the Findings as to the Facts, Conclusions and Order, has no foundation either in fact or in law and is wholly unwarranted under the record in this case.

4 9. That Petitioner will set out in its brief to be filed in the United States Court of Appeals for the Eighth Circuit as provided by the Rules, all of the points upon which it relies.

Wherefore, your Petitioner prays that the aforesaid Order of the Federal Trade Commission be reviewed by this Honorable Court and that upon such review the said cease and desist order of the Federal Trade Commission entered in their Docket No. 6252 against Petitioner be set

aside and held for naught. Petitioner prays for such other and further relief as to the Court may seem meet and just.

TRAVELERS HEALTH ASSOCIATION,

By: A. F. Bloom, Its President.

C. C. FRAIZER, Counsel for Petitioner.

Of Counsel:

T. J. Fraizer,
Fraizer & Fraizer,
312 Lincoln Liberty Life Building,
Lincoln, Nebraska.

Duly Sworn to by A. F. Bloom (Jurat omitted in Printing)

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5 In the United States Court of Appeals

Certificate of Secretary of Federal Trade Commission to Transcript of Record—Filed April 18, 1957

United States of America

Before Federal Trade Commission, ss:

In the Matter of

Travelers Health Association.

Docket 6252.

I, Robert M. Parrish, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, in four parts, as follows:

Part 1—Pleadings
Part 2—Testimony
Argument
Part 3—Exhibits—Documentary
Part 4—Public Docket Sheets

and original physical exhibit:

That this transcript is certified to the United States Court of Appeals for the Eighth Circuit, pursuant to the filing in said Court of a petition for review of an order to cease and desist, issued by the Federal Trade Commission December 20, 1956, in the above indicated proceeding.

Seal
Fed. Trade Com.
U. S. of America
MCMXV

In witness whereof, I hereunto subscribe my name and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 11th day of April, A. D., 1957.

ROBERT M. PARRISH,
Secretary.

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6 BEFORE FEDERAL TRADE COMMISSION

Complaint—Issued Oct. 14, 1954

Docket No. 6252

In the matter of:

Travelers Health Association

Pursuant to the provisions of the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Travelers Health Association, a corporation, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph One: Respondent, Travelers Health Association, is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1613 Farnam Street, Omaha, Nebraska.

Paragraph Two: Respondent is now, and for more than two years last past has been, engaged as an insurer in the

business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by entering into insurance contracts with insureds located in various States of the United States other than the State of Nebraska, in which states the business of insurance is not regulated by state law to the extent of regulating the practices of respondent alleged in this complaint to be illegal. Respondent maintains, and at all times mentioned herein has maintained, a substantial course of trade in said insurance policies in commerce between and among the several States of the United States.

Respondent during the two years last past has issued a variety of policies providing indemnification for losses resulting from sickness including those designated by it as DW N-49, CW N-49, CD N-49 and CS N-49.

7 The respondent is licensed, as provided by the respective state laws, to conduct an insurance business in the States of Nebraska and Virginia. Respondent is not now, and for more than two years last past has not been, licensed as provided by state law to conduct an insurance business in any state other than those last above mentioned.

Respondent solicits business by mail in the various States of the United States in addition to the States of Nebraska and Virginia. As a result thereof it has entered into insurance contracts with insureds located in many states in which it is not licensed to do business. Respondent's business practices are not regulated by any of those states as it is not subject to the jurisdiction of such states.

Paragraph Three: In the course and conduct of its said business, and for the purpose of inducing purchasers of said insurance policies, the respondent has made, and is now making numerous statements and representations concerning the benefits provided in said policies of insurance, by means of circulars, folders, form letters, and other advertising material distributed throughout the various States of the United States. Typical, but not all inclusive of such statements and representations are the following:

1. "There is no age limit to which a member may continue protection.

"There is no age limit to continue membership and no increase in premiums to those of advanced age."

2. "At home, in the hospital, in a hotel—no matter where you are—when sickness prevents you from working and you have physician's care, we pay.

"You don't have to choose your diseases, we cover all diseases, except genital.

"Benefits are paid for one day to one hundred four weeks. All diseases, except genital, are covered.

"Briefly, we pay for time lost through sickness. All diseases, except genital, are covered. You choose the amount you need $25, $50, $75 or $100 a week. We pay for one day up to one hundred four weeks of total disability. Hospitalization or surgery is not required. Just total disability."

3. "No medical examination is required."

Paragraph Four: Through the use of such statements and representations, and others of similar import and meaning more specifically set out herein, respondent represents and has represented directly or by implication:

(1) That the said insurance policies provide continuing indemnification for losses resulting from accidental injury, sickness or disease so long as the policy holder makes premium payments within the period of time and in the amounts fixed by the terms of such policies.

(2) That said insurance policies provide indemnification from one day to 104 weeks, in a specified amount, for loss of time from work due to disability caused by all sickness or disease, except genital, that may occur to the insured after the effective date of the policy.

(3) That in determining whether or not cash benefits will be made for losses resulting from sickness or disease that may arise after the effective date, the respondent will not take into consideration the physical condition of the insured prior to or at the time the policy was issued.

Paragraph Five: The aforesaid statements and representations are false, misleading and deceptive. In truth and in fact:

1. The insurance policies cannot be continued in effect by the insured if the respondent wishes to cancel the policy. On the contrary the respondent may refuse to accept such premium payments and cancel such policies at any time for any reason or for no reason at all by written notice and return of such premium payments to the policyholder.

2. Said policies do not provide indemnification up to 104 weeks in the full amounts specified for time loss caused by all sickness, except genital, that may occur to the insured after the effective date of the policy. On the contrary under the provisions of these policies no liability exists where the cause of the sickness is traceable to a condition existing prior to thirty days after the effective date of the said policies.

No benefits shall be paid when the disability is due to hernia, prostatitis, disease in the genital organs, or sustained or contracted in consequence of the insured being intoxicated or under the influence of narcotics unless administered on advice of a physician.

Benefits shall not be paid for disability due to tuberculosis, neuritis or any form of rheumatism, paralysis, nervous trouble, or mental trouble in an amount to exceed one-half the weekly indemnity, nor for more than 10 weeks. If the insured carries other insurance covering the same loss the respondent then will be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of all like indemnity in all policies covering such losses.

Further, said policies provide that the insured will not receive any indemnity unless he is totally disabled solely by sickness. In addition, they provide that, in case the disability does not confine the insured continuously within doors, the benefits payable are one-half (two-fifths in the case of policies for men) of the specified amount and are payable for a maximum period of only ten weeks.

Further, said policies are issued so that they provide benefits for women for a maximum period of only 52 weeks.

The benefit paid for the first week's confinement under all of said policies is only one-half (two-fifths in the case of the policies for men) of the amount specified unless, in the case of a man's policy only, it has been in effect for more than one year.

3. The respondent does take into consideration the physical condition of the insured prior to and at the time the policy was issued in determining whether or not the cash benefit will be paid for loss resulting from sickness. The respondent in the course and conduct of its business has refused claims for loss of time caused by sickness when such sickness was traceable to a condition existing prior to the effective date of the policy.

Paragraph Six: The use by the respondent of the aforesaid false and misleading statements and representations with respect to the terms and conditions of its said policies and its failure to reveal the limitations of said coverage found in said policies have had and now have the tendency and capacity to mislead and deceive and have misled and deceived a substantial portion of the purchasing public into the erroneous and mistaken belief that the aforesaid statements and representations were and are true and to induce said portion of the purchasing public to purchase insurance coverage from the respondent because of said erroneous and mistaken belief.

Paragraph Seven: The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, The Premises Considered, the Federal Trade Commission on this 14th day of October, A. D. 1954, issues its complaint against said respondent.

Notice

Notice is hereby given you, Travelers Health Association, a corporation, respondent herein, that the 15th day of December A. D., 1954, at 10 o'clock is hereby fixed as the time and Omaha, Nebraska as the place when and where a hearing will be had before William L. Pack, a hearing ex-

aminer of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which case you shall so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged
11 in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondent may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission and Hearing Examiner William L. Pack, without further notice, to find the facts to be as alleged herein and to issue the following order in this proceeding:

It Is Ordered that respondent Travelers Health Association, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the

Federal Trade Commission Act, of any accident, health, hospital or surgical insurance policy, do forthwith cease and desist from:

(A) Representing, directly or by implication:

(1) That said insurance policy may be continued in effect indefinitely or for any period of time, when, in fact, said policy provides that it may be canceled by respondent or terminated under any circumstances over which insured has no control, during the period of time represented.

(2) That said policy provides a weekly or other cash benefit to insureds, when disabled by sickness, for a longer period of time or in a larger amount than is in fact provided.

(3) That said policy provides for cash benefits for living expenses or otherwise in cases of sickness generally or in any or all cases of sickness when said policy does not provide for such benefits in all such cases.

(4) That no medical examination is required or that applicant's health is not a factor in securing insurance,
12 unless the representation is clearly and conspicuously limited in immediate connection therewith to insurance on claims not caused by previous conditions of health of the insured.

(B) Misrepresenting in any other manner or by any other means the terms or provisions of said insurance policies.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 15th day of December, A. D., 1954, why such order should not issue.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 14th day of October, 1954.

By the Commission.

ROBERT M. PARRISH,
Secretary.

(Seal)

Before Federal Trade Commission

In the Matter of

Travelers Health Association, a Corporation.

Docket No. 6252.

Answer of Travelers Health Association—Filed Nov. 8, 1954

For answer to the complaint respondent alleges that the Federal Trade Commission is without jurisdiction in this matter because in truth and in fact each and every activity of the respondent is regulated, supervised and otherwise overseen by the Director of Insurance and the Department of Insurance of the State of Nebraska, which under Nebraska state law, fully regulate such activities within the meaning and scope of Public Law 15 enacted by the Congress of the United States, and for further answer, respondent states:

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I.

Respondent admits the allegations of Paragraph One.

II.

Respondent admits that the factual statements in Paragraph Two are substantially accurate and correct and neither confirms nor denies the accuracy of legal conclusions of law therein contained.

III.

Respondent admits that the sentences and passages quoted in Paragraph Three are used in various places in respondent's advertising, but alleges same are lifted out of context from the whole of advertising and presentations of its insurance coverages, as will be more fully related hereinafter.

Further answering Paragraph Three of the complaint, respondent alleges:

1. The quoted statements—

"There is no age limit to which a member may continue protection."

and

"There is no age limit to continue membership and no increase in premiums to those of advanced age."

are true. Actually, respondent has never cancelled the policy of a member on account of advanced age, respondent presently having members eighty years or more of age. There has never been an increase in premiums because of advanced age of a member.

2. The quoted statements—

"At home, in the hospital, in a hotel—no matter where you are—when sickness prevents you from working and you have physician's care, we pay."

"You don't have to choose your disease, we cover all diseases, except genital."

"Benefits are paid for one day to one hundred four weeks. All diseases, except genital, are covered."

14 "Briefly, we pay for time lost through sickness. All diseases, except genital, are covered. You choose the amount you need $25, $50, $75 or $100 a week. We pay for one day up to one hundred four weeks of total disability. Hospitalization or surgery is not required. Just total disability."

are each and all true, and respondent actually pays claims fairly and maintains a loss ratio higher than the National average.

3. The quoted statement—

"No medical examination is required."

is true.

IV.

Respondent alleges that the allegations of Paragraph Four of the complaint are factually inaccurate and unjustified conclusions, as will be commented upon in detail hereinafter.

V.

Respondent denies that any statements and representations contained in respondent's advertising are false, misleading and deceptive, and alleges that it uses a plan of

advertising and solicitation consisting of the mailing of a series of approximately eight consecutive letters, distributed over a considerable period of time to individuals recommended as being eligible for membership in respondent by present members and policyholders, and there is no general distribution or presentation to the public at large, and resulting in the writing of coverages for selected and preferred risks; that each such letter is accompanied by an application blank which contains prominently displayed thereon additional features of the insurance contract being offered.

Further answering Paragraph Five of the complaint, respondent alleges:

1. That while respondent retains the privilege of cancellation of policies and the privilege of refusing to accept premium payments, in truth and in fact, cancellations and refusal to accept premium payments occur in only comparatively rare instances such as discovery of false statements or misrepresentations in the member's application, or such as instances of members making claims for chronic recurrent physical disabilities, such being an accepted publicly known practice of the insurance industry with regard to normal or low premium optional policies as distinguished from non-cancellable high premium insurance. The Uniform Policy Provisions Law enacted in Nebraska and in use in most of the states distinguishes between noncancellable and optional renewable insurance. All disability insurance is recognized to be cancellable unless advertised as non-cancellable.

2. Respondent's policies do provide indemnification for up to one hundred and four weeks in the full amounts specified for time loss caused by all sickness, except genital, that may occur to the insured after a waiting period of thirty days subsequent to the effective date of the policy, all as clearly and prominently set out in the advertising portion of the application blank accompanying each mailing. No benefits are paid when disability is due to hernia, which is not a sickness but caused by accident or congenital infirmity; nor due to prostatitis, which is a disease of the genital organs specifically excepted from coverage; nor sus-

tained or contracted in consequence of insured being intoxicated or under influence of narcotics unless administered on advice of a physician because in neither event does sickness occur although accidents may occur due to intoxication or use of narcotics. In all of its advertising material, respondent represents that it covers its members for disability caused by sickness, with exceptions plainly stated, and absolutely does not represent that it covers its members for accidents.

On the advertising portion of the application forms, the rate of indemnity and the maximum length of time for indemnity payments are clearly indicated and specified. It is not true as stated in the complaint, that if the insured carries other insurance covering the same loss, respondent will be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of all like indemnities in all policies covering such loss, the truth being that policies so provide unless the member or policyholder has notified respondent that other insurance is being carried; such provision being a standard provision
authorized by the laws of most, if not all, of the
16 States in the Union, the purpose thereof being to eliminate the damage of fraud and unjust enrichment of a policyholder. Actually, said policy provision has never been enforced in the entire history of respondent.

The provision that the insured will not receive any indemnity unless he is totally disabled solely by sickness, and the provision that indemnity will be paid on a reduced basis if the insured is not confined continuously within doors with a reduced maximum benefit paying period, are clearly and prominently set out in the advertising contained on the application blank.

3. Respondent does take into consideration the physical condition of the insured prior to and at the time policy is issued in determining whether or not the cash benefits will be paid for loss resulting from sickness, and respondent depends upon the applicant to tell the truth in the application, and applicant's untruthfulness or fraud are the only reasons for non-payment of benefits if they would otherwise be due and payable. An applicant should not be per-

mitted unjust enrichment as a reward for falsity and fraud. At no time has respondent refused claims based on sickness traceable to a condition existing prior to the effective date of the policy and covered by policy terms unless there occurred an untrue statement in the application.

VI.

Respondent denies the allegations of Paragraph Six in the complaint, and alleges that the terms and conditions and limitations of the policies which it issues are truthfully, accurately and fairly set out in respondent's advertising and presentation which, as hereinbefore alleged, is made and distributed to preferred and selected individuals only, and not to the public at large.

VII.

Respondent denies the allegations contained in Paragraph Seven of the complaint.

VIII.

Respondent further alleges that its advertising and presentation material was approved by the Federal Trade Commission as being in compliance with "Trade Practice
17. Rules Relating to the Advertising and Sales Promotion of Mail Order Insurance" promulgated by the Commission under date of February 3, ~~1960~~ 1950.

Wherefore, respondent respectfully prays that the complaint herein be forthwith dismissed.

FRAIZER & FRAZIER,

By: C. C. Fraizer,

T. J. FRAIZER,
Attorneys for Respondent.

FRAIZER & FRAZIER
Law Offices
425 Lincoln Liberty Life Bldg.
Lincoln, Nebraska.

BEFORE FEDERAL TRADE COMMISSION

In the Matter of

Travelers Health Association, a corporation.

Docket No. 6252.

Order receiving into Record Commission's Exhibit No. 75—December 20, 1955

At the hearing in the above-entitled proceeding, it was agreed that respondent would prepare and submit data pertaining to claims which arose during 1953 under its health and accident insurance policies. This respondent has done, but in addition thereto respondent has submitted some explanatory statements, which will be disregarded except as they may be necessary to an understanding of the terminology used in presenting the statistical data furnished. Therefore,

It Is Ordered that the exhibit now marked Exhibit No. 75 be, and the same hereby is, received into the record in this proceeding as Commission's Exhibit No. 75, the paragraphs headed "1953 Claim Numbers Assigned" and
18 "Disposition of Claim Numbers Issued in 1953" without qualification, the remainder of the exhibit to the qualifications hereinabove set forth.

J. EARL COX,
Hearing Examiner.

December 20, 1955.

BEFORE FEDERAL TRADE COMMISSION

In the Matter of

Travelers Health Association, a corporation.

Docket No. 6252.

Initial Decision by J. Earl Cox, Hearing Examiner—March 27, 1956

The respondent in this proceeding is charged with violating the Federal Trade Commission Act, as that Act is applicable to the business of insurance under the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015), by disseminating false and misleading

advertising relating to its health insurance policies. The complaint was issued October 14, 1954. By answer respondent denies that it has violated the law as charged, alleging that the terms, condition and limitations of the policies it issues have been and are truthfully, accurately and fairly set out in its advertising, that the Federal Trade Commission is without jurisdiction in the matter, and "that its advertising and presentation material was approved by the Federal Trade Commission as being in compliance with 'Trade Practice Rules Relating to the Advertising and Sales Promotion of Mail Order Insurance' promulgated by the Commission under date of February 3, 1950".

Prior to the initial hearing in this proceeding respondent, without waiving its objection to jurisdiction,
19 filed a motion to dismiss the complaint on the ground that the advertising cited in the complaint had been discontinued and discarded, and that further proceedings in this matter would no longer be in the public interest. Final ruling on this motion was deferred pending presentation of all the facts in the proceeding.

Hearings have been held at which evidence in support of and in opposition to the allegations of the complaint was received, duly recorded and later filed in the office of the Commission. Proposed findings of fact, conclusions and memoranda of law have been submitted by counsel and the matter is now before the Hearing Examiner for disposition upon the entire record.

The general facts, particularly those upon which jurisdiction rests, are not seriously in dispute.

1. Respondent, Travelers Health Association, is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1613 Farnam Street, Omaha, Nebraska. It was incorporated in 1904.

2. Respondent is now, and for more than two years last past has been, engaged in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by soliciting and entering into insurance contracts with persons living in various States of the United States other than the State of Nebraska. Respond-

ent's business has been and is substantial. The dollar volume of its premium receipts, including those from Nebraska, has been as follows: for 1952, $568,000; for 1953, $560,000; and for 1954, $548,000.

Respondent during the two years last past has issued policies providing indemnification for losses resulting from sickness, designated by it as DW N-49, CW N-49, CD N-49, CS N-49, CD O-49, CD O 1-49 and DWO-49. These policies are practically uniform except that amounts of benefits differ and some policies are for men, others are for women.

3. Respondent is licensed only in the States of Nebraska and Virginia, although it transacts business by mail with residents of all the states. Its advertising, promotional activities and all other business practices originate in and are carried on from its home office in Omaha, Nebraska. Its advertising is mailed from Omaha, its policies are issued there, premium payments are received, claims are filed, serviced and paid at or from that office. No policies are sold by or through agents. Respondent pays taxes in Nebraska on premiums collected from all policy-holders excepting only those who live in Virginia. Taxes on premiums collected from residents of Virginia are paid to Virginia. Annual statements are filed in Nebraska and Virginia.

Respondent does no newspaper or magazine advertising, but solicits sales by mailing, at intervals and in continuity, a series of circular letters to "white-collar" workers. With each mailing an application blank is enclosed, on the reverse side of which there is advertising material describing policy provisions. Some of the mailings include a descriptive leaflet, "Our Plan Explained"; some include a "Choose the Right Amount" slip which suggests that care be taken in selecting the policy which provides the proper amount of benefits; some contain a slip which has a testimonial on one side and on the other side a statement as to the date to which coverage is to be provided if a membership deposit is sent in; sometimes a copy of respondent's annual statement is enclosed. There are other letters for lapsed policy-holders urging them to reinstate. Many letters are used. Ordinarily an individual prospect will receive a series of

eight letters, although some may receive as many as thirty. The letters are not broadcast to the public, but are addressed to individuals who have been recommended by respondent's policy-holders.

4. Jurisdiction: The question of jurisdiction is determined under the Federal Trade Commission Act as applicable to the business of insurance under Public Law 15.

The pertinent provisions of public Law 15 read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the

21 continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

"Sec. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

"(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance; Provided, That after January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State Law."

Public Law 15 was enacted to allay the considerable unrest and uncertainty which developed in the insurance industry and among officials in the insurance departments of

the various states following the decision in U. S. vs. South Eastern Underwriters Association, 322 U. S. 533 (1944), in which the Supreme Court held that insurance business, unless confined to a single state, is commerce as the term "commerce" is used in the Constitution, the anti-trust laws, and the Federal Trade Commission Act. Prior to that decision, regulation and control of insurance by the states had not been questioned, and they had developed comprehensive regulatory and taxing systems which seemed to be limited only by the jurisdictional aspects of due process. Following the decision, had Congress remained silent, the Federal Trade Commission Act would have been applicable to the business of insurance in the same manner and to the same extent as it is applicable to other businesses in interstate commerce, the precedents of numerous court decisions would have been controlling, and Federal Trade Commission jurisdiction in the instant case would be indisputable.

22 In Prudential Insurance Co. vs. Benjamin, 328 U. S. 409 (1946), the Supreme Court was faced with the interpretation of Public Law 15 as it applies to the taxation of an out-of-state insurance company by a state in which that insurance company was doing business under license. In sustaining state "taxation", the court laid down principles which are applicable to "regulation". Speaking through Justice Rutledge, the Court said:

"Obviously, Congress' purpose was broadly to give support to the existing and future state systems for regulating and taxing the business of insurance. This was done in two ways. One was by removing obstructions which might be thought to flow from its own power, whether dormant or exercised, except as otherwise expressly provided in the Act itself or in future legislation. The other was by declaring expressly and affirmatively that continued state regulation and taxation of this business is in the public interest and that the business and all who engage in it 'shall be subject to' the laws of the several states in these respects."[1]

[1] Prudential Insurance Co. vs. Benjamin, 328 U. S. 409 (1946), p. 431.

Following the logic of the Prudential case, the conclusion has been reached [2] that under Public Law 15, Federal Trade Commission jurisdiction is precluded to the extent that the states in which a respondent insurance company is licensed to transact its accident and health insurance business have regulatory statutes applicable to such insurance company and to the acts and practices which fall within the inhibitions of the Federal Trade Commission Act.

This proceeding, however, presents a different problem. Although respondent carries on its business throughout the entire United States, it is licensed only to Nebraska and Virginia. The Virginia license was required of respondent as the result of a cease-and-desist order issued by the State Corporation Commission of Virginia under authority provided by the state's Blue Sky Law. The Supreme Court, in Travelers Health Assn. vs. Virginia, 339 U. S. 643, upheld the right of Virginia to issue such an order in

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a decision which might be broadly interpreted as supporting the right of Virginia to regulate, within the state, respondent's advertising acts and practices. However, respondent makes no such contention in this proceeding, but says, "the actual conduct of all its business being under the Nebraska license", it is "regulated comprehensively and exclusively by Nebraska law" to the exclusion of Federal Trade Commission jurisdiction in this proceeding, under the proviso clause of Public Law 15. Thus the determination of jurisdiction resolves itself into a single issue—does the regulation by Nebraska, respondent's domiciliary state, of respondent's acts and practices charged in the complaint to be false, misleading and deceptive constitute regulation to the extent contemplated by Public Law 15 as precluding Federal Trade Commission jurisdiction?

The Model Unfair Trade Practices Bill for Insurance (hereinafter referred to as the Model Act) has been adopted as Section 44-1501 to 44-1521 of the Nebraska statutes. The purpose of the Model Act, as stated therein, is to regulate trade practices in accordance with the intent of Congress as expressed in Public Law 15. Obviously it regu-

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[2] See Initial Decisions in The American Hospital & Life Ins. Co., D. 6237; Gardian Ins. Co. et al., D. 6281; and National Casualty Co., D. 6311.

lates only acts and practices within the state. This is disclosed by the language of the Act. Note the following, in which single underscoring indicates section headings; double underscoring indicates textual phrases to which special attention is directed:

"44-1503. Unfair methods of competition; deceptive acts and practices; prohibited. No person shall engage in this state in unfair methods of competition or in unfair or deceptive acts and practices in the conduct of the business of insurance".

(Unfair methods of competition and deceptive acts and practices are defined in Section 44-154. Section 44-1505 gives the Director of Insurance power to examine and investigate.)

"44-1506. Unfair methods of competition; deceptive acts and practices; charges; notice of hearing. If the Director of Insurance shall have reason to believe
24 that any person is engaging in this state in any such unfair or deceptive act or practice in the conduct of such business, * * * ".

"44-1515. Other unfair methods of competition and deceptive acts and practices; report by Director of Insurance; hearing. If the Director of Insurance shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business, * * * ".

Other Nebraska statutes relied upon by respondent are the following:

"44-348. Policies or certificates; form; approval of department required. No insurance policy or certificate of any kind shall be issued or delivered in this state unless and until a copy of the form thereof has been filed with the Department of Insurance, and approved by it."

"44-712.01. Sickness and accident insurance; standards; insurer domiciled in state; nonresident delivery; approval.

If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the director that any such policy is not subject to approval or disapproval by such official, the Director of Insurance may by ruling require that such policy meet the standards set forth in section 44-712, and sections 44-713 to 44-728."

Respondent cites also Section 44-750, which prohibits any company doing business in the state from using "in connection with the solicitation of sickness and accident insurance any advertising copy or advertising practice or any plan of solicitation which is materially misleading or deceptive"; Section 44-751, which provides that if the state "Director of Insurance finds (after a hearing) that any such advertising copy or advertising practice or plan of solicitation" has been used "he shall order the company or the agent • • • to cease and desist from such use"; and Section 44-752, which provides that if the director finds that any such order to cease and desist has been willfully violated "he may suspend or revoke the license" of such company or agent. Suspense or revocation of a license may result also for other causes.

To expedite the enforcement of the advertising standards enumerated in the various Nebraska statutes, the insurance department of the state has issued Rule No. 16, which provides that all insurance companies "engaged in the business of sickness and accident insurance in Nebraska, shall maintain at their home office a complete file of all advertising matter used by the company" in connection therewith and that this shall be subject to periodic inspection by the department.

These statutes and rule, respondent contends, are adequate under Public Law 15 to preclude Federal Trade Commission jurisdiction in this proceeding. But respondent has overlooked the specific limitation of certain of the provisions to activities within the state, and the distinction between the police power and the charter power of a state. The United States Court of Appeals for the Ninth Circuit, in Washington Alaska Bank, et al. vs. Dexter Horton Nat. Bank (C.C.A. 9. 1920) 263 F. 304. 307-309, has said:

"A marked distinction is observed between the laws of the state which become a part of the charter of the corporation and those of the state which regulate corporations in their manner of doing business in the state. The former will follow the corporation when it engages in business in another state. The latter will not."

The United States Supreme Court has held that—

"No state can, by merely creating a corporation, • • • project its authority into other states • • • so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce" (Northern Securities Company v. United States, 103 U.S. 197, 345 (1904).

Regulation by the exercise of a state's charter power is not the type of regulation contemplated by the provisions of Public Law 15. An examination of the statute and
26 of its legislative history confirms that conclusion. Hence all the regulation left with the State of Nebraska, so far as this proceeding is concerned, is regulation under its police power, which is coextensive only with the state's boundaries. Under this power, Nebraska does not have authority to regulate respondent's advertising acts and practices which take place beyond its boundaries, and therefore those acts and practices are without state regulation under the proviso clause of Public Law 15 and the Federal Trade Commission does have jurisdiction with respect thereto.

Respondent has also suggested, if its main contention is denied, that although it is not licensed generally throughout the United States, each individual state, if it so desired, could take action under its statutes relating particularly to service upon non-resident corporations. This position is not tenable in that Congress, in Public Law 15, was contemplating actual, enforceable regulation under which every resident of every state would have protection against false, deceptive and misleading acts and practices in advertising. Any other conclusion would limit the citizens of some states to the protection of a government in which they have no voice and which has for their welfare only casual concern.

Effective regulation, within the meaning of Public Law 15, must be exercised by a government, state or federal, which has a direct, positive authority and responsibility to provide protection for the persons who are or may be adversely affected by false and misleading practices.

Respondent also advanced a theoretical argument that the Federal Trade Commission Act does not apply "even though the state's regulation does not extend to the matter of advertising". This agreement is based on an unwarranted interpretation of Public Law 15, the proviso of which states that the Federal Trade Commission Act "shall be applicable to the business of insurance to the extent that such business is not regulated by State law". Clearly, if state laws do not cover or regulate the advertising practices of an insurance company, then, to that extent, there is no state regulation and the Federal Trade Commission Act is applicable.

Upon the entire record the conclusion reached is that in this proceeding the Federal Trade Commission has
27 jurisdiction over respondent and its acts and practices, in commerce, charged in the complaint to be false, misleading and deceptive.

5. Issues of Fact: The complaint charges that, for the purpose of inducing the public to buy its insurance policies, through the use of its advertising literature which is distributed throughout the various states of the United States by mail, the respondent has made three types of false and misleading representations, which will be considered seriatim. The representations charged are:

(1) That the said insurance policies provide continuing indemnification for losses resulting from accidental injury, sickness or disease so long as the policyholder makes premium payments within the period of time and in the amounts fixed by the terms of such policies;

(2) That said insurance policies provide indemnification from one day to 104 weeks, in a specified amount, for loss of time from work due to disability caused by all sickness or disease, except genital, that may occur to the insured after the effective date of the policy;

(3) That in determining whether or not cash benefits will be paid for loss resulting from sickness or disease that may arise after the effective date of a policy, the respondent will not take into consideration the physical condition of the insured prior to or at the time the policy was issued.

6. The first charge, (1) above, is based on two advertising statements quoted in the complaint and on other advertising statements of similar import and meaning.

From the complaint:

(a) "There is no age limit to which a member may continue protection."

This statement follows a paragraph appearing on the reverse side of the application form and in the "Our Plan Explained" folder. The complete text follows:

28 "Who Is Eligible

"Any white person over eighteen years of age, of good moral character and in good general health whose occupation at the time of application is classified as a select or preferred risk and who in the opinion of the Board of Directors is a desirable risk is eligible to membership in this Association, provided that if such applicant is a man he may not be over fifty-five years of age and if a woman not over fifty years of age.

"There is no age limit to which a member may continue protection."

(b) "There is no age limit to continue membership and no increase in premiums to those of advanced age."

This is from a form letter used by respondent in 1953 and 1954 as one of a series of letters which, accompanied by an application, was sent to approximately 98,000 prospects. The full paragraph from which it was taken is as follows:

"Practically all 'white-collar' workers—business or professional men—are eligible, if in good health and between eighteen and fifty-five years of age. There is no age limit to continue membership and no increase in premiums to those of advanced age."

The alleged representation (1), above, is a distortion of the meaning of the language contained in respondent's advertising material; in some respects it is entirely without foundation. The respondent does not engage in accident insurance business, and a careful examination of all the advertising material in the record fails to disclose any reference to "indemnification for losses resulting from accidental injury". There is a complete failure of proof as to this part of the charge.

No statement is contained in any of the advertising material that indemnification will continue "so long as the policy-holder makes premium payments within the period of time and in the amounts fixed by the terms of such policies". There is no evidence in the record that any prospective purchaser ever drew such an inference from the language used by respondent, and the language used by respondent, when read in context, cannot reasonably

29 be said to support such an inference. An advertisement should be read in its entirety and interpreted after its purpose, use and entire context have been considered. A word phrase, sentence or paragraph, lifted out of context, can always be interpreted as misleading if unrealistic and unjustified implications are assumed to be embodied therein. The rule of interpretation should require reasonableness and objectivity.

Applying these principles to the interpretation of respondent's advertising, the conclusion cannot be reached that by its advertising respondent has made the representation alleged in the first charge. Upon the record, the first charge of the complaint cannot be said to be "supported by and in accordance with the reliable, probative, and substantial evidence".

7. The second charge, (2) above, is based on advertising statements quoted in the complaint, and others of similar import.

From the complaint:

(a) "At home, in the hospital, in a hotel—no matter where you are—when sickness prevents you from working and you have physician's care, we pay."

(b) "You don't have to choose your diseases, we cover all diseases, except genital."

(c) "Benefits are paid for one day to one hundred four weeks. All diseases, except genital, are covered."

(d) "Briefly, we pay for time lost through sickness. All diseases, except genital, are covered. You choose the amount you need $25, $5, $75 or $100 a week. We pay for one day up to one hundred four weeks of total disability. Hospitalization or surgery is not required. Just total disability."

(e) "No medical examination is required."

The foregoing statements are excerpted from respondent's form letters, several of which contain the identical language quoted or statements of like import. But the excerpted statements are not all of respondent's representations as made in any one mailing, because each
30 letter sent out by respondent contains other explanatory matter and is accompanied by an application form and sometimes by other literature, which more completely describes respondent's policies.

The foregoing statements are charged to be false, misleading and deceptive in five respects, as set forth in Paragraph Five of the complaint:

A. In that

"said policies do not provide indemnification up to 104 weeks in the full amounts specified for time loss caused by all sickness, except genital, that may occur to the insured after the effective date of the policy. On the contrary under the provisions of these policies no liability exists where the cause of the sickness is traceable to a condition existing prior to thirty days after the effective date of the said policies".

The application form and the folder "Our Plan Explained" contain the following paragraph, conspicuously displayed:

"Diseases Covered

"Benefits are paid for loss of time occurring more than thirty days after policy date on account of practically all

diseases, except genital. We pay for one day or more of total disability, whether confined within doors or not. Benefits due to tuberculosis, neuritis, arthritis, rheumatism, nervous or mental trouble limited to half for up to ten weeks.

"See policy for complete provisions."

Every prospective policy-holder received the application blank and many of them received the folder, and were therefore necessarily aware of this paragraph.

The policy provides that sickness benefits will be paid "Provided such sickness begins more than 30 days after the date of this policy • • • ".

The question raised by this charge may be one of semantics. No reasonable insured would expect benefits to be paid for loss of time caused by sickness which existed at the time the application was made or the policy issued,
31 but he might justifiably expect payment of benefits arising out of disabilities caused by any sickness which originated at any time thereafter. Respondent's policies provide that benefits will not be paid if the sickness originated within 30 days after the policy date. This fact is not clearly explained in respondent's advertising literature. Loss of time might readily occur more than 30 days after policy date as a result of sickness beginning within such 30-day period, yet no benefits would be paid under the terms of respondent's policies. In failing to disclose this fact respondent's advertising is misleading.

B. In that

"no benefits shall (will) be paid when the disability is due to hernia, prostatitis, disease in the genital organs, or sustained or contracted in consequences of the insured being intoxicated or under the influence of narcotics unless administered on advice of a physician."

Respondent's letters, application form and folder clearly disclose that diseases of the genital organs are not covered. Prostatitis is a disease of the genital organs. A hernia may be congenital or may be caused by a physical weakness, by accident or by overstrain. It is believed that it is not commonly considered a disease, such as might be covered by a

health-insurance policy. At least there is no evidence to the contrary in the record.

Under respondent's policies no benefits are provided for disabilities sustained or contracted in consequence of the insured being intoxicated or under the influence of narcotics unless administered on advice of a physician. That fact is not specifically disclosed in respondent's advertising literature. A warning that might be applicable to such a possibility is contained in the last sentence of the "Diseases Covered" paragraph quoted under A, above—"See policy for complete provisions." Whether or not this in an adequate warning is subject to some doubt.

Respondent's mailings are only to "white-collar" workers who presumably may sometimes suffer after-effects from use of narcotics or intoxicants. Each applicant must be a "white person over eighteen years of age, of good moral character ** who ** is a desirable risk. but
32 what their level of intelligence is, how familiar they are with insurance-company practices, whether they would expect a health-insurance policy to cover such after-effects are unanswered questions so far as the record in this proceeding discloses. It would have helped materially if some evidence had been presented in this respect. This is an area in which the Hearing Examiner has no experience and is therefore not an expert, but his innate judgment tells him that he would not like to belong to an insurance association in which ultimate policy cost is determined by assessment method if that association undertook in its policies to cover physical disabilites which are caused by personal misconduct or arise from self-abuse. Certainly over-use of narcotics and intoxicants falls within such classification. It is not believed that any policy-holder would expect such coverage.

The conclusion is reached that the reliable, probative, substantial evidence of record does not establish that the omission of a direct reference to the fact that such conditions are not covered by respondant's policies is a false, deceptive or misleading practice.

C. Respondent's representations are alleged to be faulty in that, under respondent's policies,

"Benefits shall (will) not be paid for disability due to tuberculosis, neuritis or any form of rheumatism, paralysis, nervous trouble, or mental trouble in an amount to exceed one-half the weekly indemnity, nor for more than 10 weeks. If the insured carries other insurance covering the same loss the respondent then will be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of all like indemnity in all policies covering such loss."

The policies provide that no benefits "due to * * paralysis" and other specifically mentioned conditions shall be paid for more than 10 weeks, nor in an amount to exceed half the weekly indemnity otherwise provided.

The "Diseases Covered" paragraph from the application form, hereinabove quoted in full, states that coverage is "limited to half for up to ten weeks" for disabilities due to all the ailments mentioned in the charge except paralysis, which is omitted in the advertising material, but mentioned in the qualifying clause in respondent's policies. Whether this omission was intentional or by inadvertence is not significant. The fact is that the advertising material does not make full disclosure. It it urged by respondent that a free interpretation of the language of limitation used in the "Diseases Covered" paragraph is broad enough to cover disabilities due to paralysis and that, even if it is not, the prospective purchaser has ample warning that other conditions than those specifically mentioned may result in disabilities for which only limited benefits will be paid. Reference is to the phrase, "See policy for complete provision."

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Although paralysis may sometimes be associated in the public mind with, or regarded as an aftermath of neuritis, rheumatism or nervous disorders, that is little excuse for not mentioning it in respondent's advertising literature. Certainly the suggestion that the applicant see respondent's policy "for complete provisions" is not an adequate cure for such failure. The conclusion is that in this respect respondent's advertising is misleading.

In the application there is a question as to whether the applicant has any other health or accident insurance, and if so, with what companies or organizations. Respondent's policies contain a provision that if other coverage exists for the same loss as that covered by its policies, without written notice to respondent, its liability will be proportional—i.e., respondent "shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined. This is a standard provision authorized by Nebraska law, presumably for the purpose of eliminating fraud. Furthermore, in signing an application for membership, the applicant represents, as set forth in the introductory paragraph of the application, that the statements of facts contained therein are "true and complete," and that he understands and agrees that the falsity of any statement may bar the right to recovery if it affects
34 the acceptance of the risk or hazard assumed by the Association.

If an insured has made full disclosure in his application, the respondent will have been notified that other coverage exists and this particular provision of the policy will not be applicable. Only when the insured has not made full disclosure will he be affected. The policy limitation is a reasonable one and is not in violation of or contrary to the representations made. Furthermore, it is a provision that has never been exercised in respondent's more than 50 years in business. No misrepresentation or deception is established by the evidence of record as to this portion of the charge.

It is further alleged that the second representation set forth in the complaint is false and misleading in that

"said policies provide that the insured will not receive any indemnity unless he is totally disabled solely by sickness. In addition, they provide that, in case the disability does not confine the insured continuously within doors, the benefits payable are one-half (two-fifths in the case of policies for men) of the specified amount and are payable for a maximum period of only ten weeks."

This charge of the complaint is without substantiation. The very st line of the application which a prospective insurance purchaser must fill out requires the applicant to indicate the amount of money he is enclosing and the class membership he desires.. The directions are explicit. Below the line on which this choice is to be indicated are the following instructions:

"(Insert $2, $4, $6, or $8) See schedule back page (Insert Class S, D, A, or B)".

The application form can be filled out only by looking for information to the back page of the application form, where there are two schedules of "Benefits and Cost"—one for men and one for women.

The schedule for men shows that available classes of membership are "S" "D", "A" and "B", for which membership fees are $2, $4, $6 and $8 and maximum weekly benefits $25, $50, $75 and $100 respectively, with
35 payments for a maximum of 104 weeks; that for non-confining disabilities benefits will be $10, $20, $30 and $40 respectively, for a maximum of ten weeks. The schedule for women lists the same classes and same membership fees but shows that maximum weekly benefits are $15, $30, $45 and $60 respectively, for a maximum of 52 weeks; and that for non-confining disabilities benefits will be paid for only ten weeks in amounts of $7.50, $15, $22.50 and $30. In the "Diseases Covered" paragraph, also on the back page of the application, it is clearly disclosed that payments are for total disability.

Any prospective purchaser with intelligence enough to fill out the application form would know and understand these statements of terms and conditions. They are correct representations of policy terms. Hence there has been and is no misrepresentation or deception in this respect. The evidence not only fails to support this phase of the second charge, but establishes the truth of respondent's statements.

E. The final allegation as to the second representation states it to be false and misleading in that

"said policies are issued so that they provide benefits for women for a maximum period of only 52 weeks. The bene-

fit paid for the first week's confinement under all of said policies is only one-half (two-fifths in the case of the policies for men) of the amount specified unless, in the case of a man's policy only, it has been in effect for more than one year."

The facts with reference to this part of the charge are very simple. The policies do provide, as the quotation above indicates, that the maximum period of payment of benefits for total disability to women is 52 weeks and, with one exception, that during the first week of confinement such benefit payments are for lesser amounts than for succeeding weeks. As shown in the preceding paragraph, the schedule on the application form clearly shows that the maximum number of weeks a women will be paid benefits is 52.

However, only one of respondent's policies, CD O-49, provides that payments for the first week's confinement shall be the same as for subsequent weeks. All the other
36 policies (whether issued to women or to men) provide reduced benefits for the first week's confinement. Neither the application blank nor respondent's other advertising literature makes reference to this fact. Typical payment provisions, as shown by representative policies, are as follows:

From CSN-49 policy for men:

"First week's confinement.....$10.00
Each week thereafter not exceeding 103 weeks 25.00

From CWN-49 policy for women:

"First week's confinement.....$ 7.50

Each week thereafter not exceeding 51 weeks 15.00". There is therefore misrepresentation and deception, through lack of disclosure of essential facts, in respondent's failure to reveal that benefits for the first week of total disability confinement are at lower rates than for succeeding periods.

Respondent's literature would lead on applicant to believe, contrary to fact, that in confining-illness cases, the maximum benefits available would be paid each week for the full period of such total disability up to a maximum of 52 weeks for women, 104 weeks for men.

8. The third charge in the complaint is that respondent, through the use of the statement "No medical examination is required" or "necessary", has represented that benefits will be paid without taking into consideration the physical condition of the insured prior to or at the time the policy was issued, whereas in reality such condition is taken into consideration and respondent "has refused claims for loss of time caused by sickness when such sickness was traceable to a condition existing prior to the effective date of the policy".

The statement "No medical examination is required" appears in various letters sent out by respondent, always in connection with an invitation for the recipient to complete and return an application form, and in conjunction with a statement that the applicant must be in good health. Typical statements follow (underscoring added):

37 "Practically all 'white-collar' workers—business or professional men—are eligible if in good health and between 18 and 55 years of age; • • • You are invited to apply for this vital, inexpensive protection of your most valuable asset—your earning power. No medical examination necessary. Just complete and return the application • • •".

"Business and professional men in good health and under 55 years of age, may join; no medical examination is required. Just complete your application • • •".

In several of the letters the last paragraph reads,

"Good health is required. Better join while you can. Right now would be the best time to apply",

or

"You must be in good health when you join".

The application contains questions: "Are you sound physically? Are you in good health? Have you any physical defect or deformity?" There are other questions about specific diseases the applicant may have or may have had. On the back of the application and in the folder "Our Plan Explained" it is stated that the applicant must be "in good general health". Every applicant thus is plainly informed that in order to procure one of respondent's policies

he must be in good health. Neither the respondent nor any other health insurer offers or undertakes to pay benefits to folks who are already ill. This would seem to be axiomatic, and is a fact generally known. The right of an insurer of health to know that an applicant was not in ill health at the time of the issuance of a health policy has never been questioned. Existing good health is a condition precedent to the acquisition of a health-insurance policy.

Another fact equally axiomatic and well-known is that before an insurer pays a claim he is entitled to know that it is valid. If claimant's statements give rise to any doubt as to validity, the insurer has a right to know all the facts, even if it requires a physical examination of the claimant. A physical examination under such circumstances is not unusual. The courts recognize the right. So far as the record in this case discloses, the respondent has never taken any steps in excess of those which have been necessary to protect itself against fraud—either at the inception of the contract or in the processing of a claim. The time of the origin of an illness may frequently be determining factor in ascertaining the validity of a claim. Whether a sickness causing a disability after the issuance of a policy actually originated after or prior to the policy-date is question favorably to the insured not only by respondent but by the courts. If a physical examination is necessary in making such determination, is it not contrary to respondent's advertising representations.

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On the basis of the facts of record it cannot be found that respondent has taken into consideration an insured's physical condition as of the time of the issuance of a policy or prior or subsequent thereto except to the extend reasonably necessary to protect itself against the assumption of undesirable risks and against the payment of improper, unjust or fraudulent claims.

Furthermore, respondent's representation with respect to medical examination is that no medical examination is required from an applicant as a condition to the procuring of a policy; and none is required. There has been no misrepresentation in this respect, and the conclusion based on all the evidence of record is that the third charge of the complaint has not been proved.

9. Also, as a defense, respondent asserts that "the approval of the principal and essential portions of (its) advertising by the Federal Trade Commission under the 1950 Mail Order Rules (Trade Practice Rules Relating to the Advertising and Sales Promotion of Mail Orders Insurance, promulgated February 3, 1950) is conclusively shown", and that therefore the complaint should be dismissed. From the evidence adduced the conclusion may be reached that prior to issuance of the complaint advertising material which had been submitted by respondent to the Commission's staff had been recognized and accepted by the staff as substantially in accord with the trade practice rules. But respondent's prior course of dealing with the Commission, or with members of its staff, is not conclusive as to

39 whether the respondent has engaged in the alleged unlawful practices, for even if it were established, or assumed, that a member of the Commission's staff had at some time in the past informed the respondent that the acts and practices under consideration herein were not objectionable, that fact would constitute no valid defense to this proceeding (Book-of-the-Month Club vs. F.T.C., 202 F. 2d 486, 1953; In the Matter of Carpel Frosted Foods, Inc., et al., 48 F.T.C. 581, 1951). Evidence of approval by the Commission's staff will be considered, then, only to the extent that it may have some weight in determining whether respondent's advertising has been or is false and deceptive. It is, at best, no more than opinion evidence, and not conclusive.

The conclusions herein reached are based, not upon opinions, but upon the facts of record as established by substantial, reliable, probative evidence.

10. The respondent asks that the case be dismissed on the ground that the advertising material complained of in this proceeding has been discontinued, discarded and not used since on or about January 1, 1955. If that fact had been established by the evidence, the proceeding could be dismissed without prejudice. But the conclusion cannot be reached that the application forms or the other advertising matter hereinabove found to contain misleading and deceptive statements have been discarded or abandoned, nor that the statements herein found to be false or misleading

have been eliminated therefrom, nor that respondent's policies (with the possible exception of one policy which has been modified in one respect) have been amended to conform to the advertising. In the absence of convincing proof of abandonment this plea of respondent must be denied.

Conclusions

Upon all the evidence of record the following conclusion are reached:

(1) that this proceeding is in the public interest;

40 (2) that the Federal Trade Commission has jurisdiction in the matter;

(3) that the respondent has violated the Federal Trade Commission Act by the acts and practices hereinabove found to be misleading and deceptive;

(4) that an order to cease and desist such acts and practices should be issued; and

(5) that the motion of respondent to dismiss this proceeding should be denied except as to those issues raised by the complaint which have been herein found not to have been established by substantial, reliable, probative evidence.

Therefore,

It Is Ordered that respondent Travelers Health Association, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any health insurance policy or policies, do forthwith cease and desist from representing, directly or by implication, that said policies, or any of them, provide any specific indemnification, benefit or payment when such indemnification, benefit or payment is or may become due or payable only subject to or under specified conditions or limitations without fully, accurately, conspicuously and contiguously therewith disclosing such conditions and limitations.

It Is Further Ordered that with respect to the issues raised by the complaint other than those to which the foregoing paragraph of this order relates, the complaint herein be, and the same hereby is, dismissed.

J. EARL COX
Hearing Examiner.

March 27, 1956.

41 Before Federal Trade Commission

Commissioners:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

In the Matter of

Travelers Health Association, a corporation.

Docket No. 6252.

Findings as to the Facts, Conclusions and Order—December 20, 1956

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 14, 1954, issued and subsequently served its complaint upon the respondent, Travelers Health Association, a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in the sale of health insurance policies in violation of the provisions of the Federal Trade Commission Act. After the filing of answer, hearings were conducted at which evidence in support of and in opposition to the allegations of the complaint was introduced before a hearing examiner of the Commission. On March 29, 1956, the hearing examiner filed his initial decision in which it was held that certain of the complaint's charges were sustained by the greater weight of the evidence and that other allegations, as there designated, were not so supported by the record, respecting which latter category of charges the initial decision's order provided for dismissal.

Within the time permitted by the Commission's Rules of Practice, counsel in support of the complaint and counsel for the respondent filed their respective appeals from the initial decision, and the Commission after considering said appeals and the record herein, including the briefs filed in support of and in opposition to the appeals and the oral arguments of counsel, has rendered its decision granting the appeal of counsel supporting the complaint and denying the appeal of the respondent; and the Com-
42 mission being now fully advised in the premises, makes the following findings as to the facts, conclusions drawn therefrom, and order, which together with the Commission's aforesaid decision ruling on the appeals shall be in lieu of the initial decision of the hearing examiner.

Findings as to the Facts.

Paragraph One: The respondent, Travelers Health Association, is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1613 Farman Street, Omaha, Nebraska. It was incorporated in 1904.

Paragraph Two: The respondent is now, and for more than two years last past has been, engaged in the business of insurance in commerce, as "commerce" is defined in the Federal Trade Commission Act, by soliciting and entering into insurance contracts with persons living in various States of the United States other than the State of Nebraska. Its business has been and is substantial. The dollar volume of premium receipts, including those from Nebraska, has been as follows: for 1952, $568,000; for 1953, $560,000; and for 1954, $548,000.

The respondent during the two years last past has issued policies providing indemnification for losses resulting from sickness, designated by it as DW N-49, CW N-49, CD N-49, CS N-49, CD O-49, CD O- 1-49 and DW O-49. These policies are practically uniform except that amounts of benefits differ and some policies are for men, others are for women.

Paragraph Three: The respondent is licensed only in the States of Nebraska and Virginia, although it transacts

business by mail with residents of all the states. Its advertising, promotional activities and all other business practices originate in and are carried on from its home office in Omaha, Nebraska. Its advertising is mailed from Omaha, its policies are issued and premium payments are received there, and claims are filed, serviced and paid at or from that office. No policies are sold by or through agents. Respondent pays taxes in Nebraska on premiums collected from all policyholders excepting only those who live in Virginia. Taxes on premiums collected from
43 residents of Virginia are paid to Virginia. Annual statements are filed in Nebraska and Virginia.

The respondent does no newspaper or magazine advertising, but solicits sales by mailing, at intervals and in continuity, a series of circular letters to "white-collar" workers. With each mailing an application blank is enclosed, on the reverse side of which there is advertising material describing policy provisions. Some of the mailings include a descriptive leaflet, "Our Plan Explained"; some include a "Choose the Right Amount" slip which suggests that care be taken in selecting the policy which provides the proper amount of benefits; some contain a slip which has a testimonial on one side and on the other side a statement as to the date to which coverage is to be provided if a membership deposit is sent in; sometimes a copy of the respondent's annual statement is enclosed. There are other letters for lapsed policyholders urging them to reinstate. Many letters are used. Ordinarily an individual prospect will receive a series of eight letters, although some may receive as many as thirty. The letters are not broadcast to the public, but are addressed to individuals who have been recommended by respondent's policyholders.

Paragraph Four: Included respectively in the brochure containing the application form and in a form letter used by the respondent in soliciting sales for its insurance contracts are the following statements:

"There is no age limit to which a member may continue protection."

"Practically all 'white collar' workers—business or professional men—are eligible, if in good health and between eighteen and fifty-five years of age. There is no age limit to continue membership and no increase in premiums to those of advanced age."

The complaint in effect alleges that through use of the foregoing statements the respondent represents that its policies provide continuing indemnification for loss as long as policyholder makes prompt payment within periods and in amounts stipulated by the policies. Such representation is misleading and deceptive, the complaint charges,

44 for the reason that respondent's policies cannot be continued in effect by the insured if the respondent wishes to cancel them. Under the policies' express terms the respondent may refuse to accept premium payments and cancel a member's policy at any time, for any reason or for no reason, upon written notice and return of the current premium payment. The record shows moreover that when the respondent's claims experience with a member indicates he is no longer a desirable insurance risk from a health standpoint, cancellation is effected by the company.

The impressions and beliefs which may reasonably be engendered among prospective insureds by the advertising statements noted above are to be additionally appraised in the light and perspective of other representations and statements appearing in the respondent's advertising. Certain of the respondent's form letters identify its insurance program variously as "a way to be sure of having extra money to pay the expense of sickness" and one which can "assure" freedom from financial worries when sick, and membership in the company is stated additionally to "guarantee" a definite income in case of illness. The central theme of the advertising emphazises that immediate or seasonable purchase of the protection afforded by respondent's policies assures comfort and freedom from financial enxiety. In this setting, the statement that age is no bar under the policies to continuance of membership and insurance protection clearly represents and implies that the respondent's policies may be kept in force continuously at the option of the insured. Inasmuch as this is contrary to the true facts, such representation is misleading and deceptive.

Paragraph Five: In the form letters used by the respondent the following additional statements appear:

"At home, in the hospital, in a hotel—no matter where you are—when sickness prevents you from working and you have physician's care, we pay."

"Benefits are paid for one day up to one hundred four weeks. All diseases, except genital, are covered."

"Briefly, we pay for time lost through sickness. All diseases, except genital, are covered. You choose the amount you need $25, $50, $75 or $100 a week. We
45 pay for one day up to one hundred four weeks of total disability. Hospitalization or surgery are not required. Just total disability."

Through use of the foregoing statements and representations, respondent represents that its policies provide indemnification from one day to 104 weeks, in specified amounts, for loss of time from work due to disability caused by all disease or sickness, except genital, incurred after the effective date of the policy. In truth and in fact, the policies do not so provide and the respondent's representations in this regard are false, misleading, and deceptive. In lieu of indemnification as aforesaid, the terms of the policy provide that liability exists only in the event the sickness causing disablity begins more than 30 days after issuance of the policy. The fact that no liability exists under the policies if the illness is traceable to a condition existing prior to 30 days after issuance is not clearly or adequately disclosed in the respondent's promotional matter. Also excluded under the policies, and similarly without express reference being made in the advertising to exclusions in that respect, are losses sustained or contracted in consequence of the insured being intoxicated or under the influence of narcotics not administered on advice of a physician.

Under other terms of the policies, benefits for disability due to paralysis are limited to one-half of the standard weekly benefits specified therein and are restricted to a maximum of 10 weeks, which conditions and restrictions are not disclosed in the advertising matter. All of the

respondent's policies, save one, provide reduced benefits for the first week's confinement from illness and any reference thereto similarly is absent from the promotional material. Furthermore, the policies contain a provision that if the insured carries other coverage for the same loss as that covered thereby without written notice to the Association, then the respondent shall be liable only for such portion of its promised indemnity as said indemnity bears to the total of like indemnity in all policies covering such loss of the insured. The existence of this potential limitation on indemnities afforded is not disclosed in any of the respondent's promotional matter.

46 Paragraph Six: The complaint further alleges in effect that certain additional exceptions, limitations and restrictions in the respondent's policies likewise have served to render false and misleading the statements and representations of the advertising noted in the preceding paragraph with respect to the indemnification afforded by the respondent. The policy provisions to which such charges relate concern, among others, those restricting maximum benefits for disability from tuberculosis, neuritis, arthritis, rheumatism, nervous or mental trouble to half the stipulated weekly rates and limiting them to a maximum of ten weeks, and others entirely excluding benefits for disability due to prostatitis and hernia. The record, however, fails to support informed determinations that a capacity to deceive in respect to those limitations and exclusions inheres in the respondent's promotional material. Hence, these charges are deemed to be without merit and dismissed hereby.

Paragraph Seven: In various form letters disseminated by the respondent to prospective purchasers of its policies, the following statements appear:

"Business and professional men, in good health and under 55 years of age, may join. No medical examination is required. Just answer the questions in your application enclosed and send it to us with the money needed to cover the benefits you choose."

"You are invited to apply for this vital, inexpensive protection of your most valuable asset—your earning pow-

er. No medical examination necessary. Just complete and return the application, using blank enclosed, with $2.00 for each $25.00 unit."

Through use of the statement that no medical examination is required, the respondent represents that it, in determining whether cash benefits will be paid for loss resulting from sickness or diseases arising after the effective date of the policy, will not take into consideration the physical condition of the insured prior to or at the time of issuance of the policy. While physical examinations are not required prior to issuance of policies, applicants are instructed to submit answers in writing to various questions included in the application form relating to physical condition and past ailments. By the terms of its policies, the company,

47 however, has the right to subject its insureds to physical examinations as often as it may reasonably require during the pendency of any claim thereunder, including the right to autopsy in case of death. The state of health of the insured prior to, contemporaneously with, and subsequent to issuance of his policy is a controlling consideration in determining eligibility thereunder for its benefits. This is clear inasmuch as the policies contain provisions to the effect that no indemnity will be paid for disability if the cause is traceable to a condition existing prior to 30 days after their issuance.

That the respondent's application form and certain of the form letters make mention of good health as a requirement for applicants is immaterial. The reference to current health in no manner serves to disclose that medical examinations subsequently may be required of the policyholder or to negate the erroneous impressions and beliefs engendered by the advertising, namely, that benefits will be paid without regard to the insured's prior condition of health. There can be no doubt but that numbered among those importuned in the advertising to fill out and transmit the application, together with the money needed to cover the benefits of their choice, have been many persons regarding their present health as robust, even though they may have had serious afflictions in the past. Their current vigor of health and the attendant deemphasis or silence of the advertising on matters relating to the prospect's

prior condition of health as having bearing on present insurability notwithstanding, the potential effects of an applicant's past ailments on future health are material considerations in determinations of eligibility for initial purchase and continuance of the respondent's insurance protection.

Conclusions

1. The Federal Trade Commission has jurisdiction over all the respondent's acts and practices found herein to be false and misleading.

2. The public interest in this proceeding is clear and substantial.

3. The use by the respondent of the statements and representations found in Paragraphs Four, Five and
48 Seven above to be false and misleading with respect to the terms and conditions of its policies of health insurance and its failure to reveal the limitations in coverage afforded by its policies has had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and to induce thereby the purchase of said policies of insurance.

4. The aforesaid acts and practices of respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices within the intent and meaning of the Federal Trade Commission Act.

Order

It is Ordered that respondent Travelers Health Association, a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any health insurance policy or policies, do forthwith cease and desist from representing, directly or by implication:

1. That any such policy may be continued in effect by the insured upon payment of stipulated premiums, indefinitely or for any stated time, unless full disclosure of any

other provision or condition of termination contained in the policy is made conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

2. That any policy provides for indemnification against disability or loss due to sickness or disease, unless a statement of all the conditions, exceptions, restrictions and limitations affecting the indemnification actually provided is set forth conspicuously, prominently, and in sufficiently close conjunction with the representation as will fully relieve it of all capacity to deceive.

3. That no medical examination is required, unless the respondent actually insures the policyholder without regard to his physical condition before or after issuance of the policy; or otherwise representing that the condition of the insured's health at the time of issuance of the
49 policy will not be considered by the respondent in determining its liability thereunder, or that the respondent will not, as a claims practice, require proof of the health of the insured at the time of issuance of the policy.

It is Further Ordered that respondent Travelers Health Association shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied therewith.

By the Commission, Commissioner Gwynne concurring in the results and Commissioner Tait not participating.

ROBERT M. PARRISH,
Secretary.

Issued: December 20, 1956

Attached are Opinion of the Commission By Commissioner Anderson and Opinion by Chairman Gwynne, Concurring in the Result.

Before Federal Trade Commission

Commissioners:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

In the Matter of

Travelers Health Association,
a corporation.

Docket No. 6252.

Opinion of the Commission—Dec. 20, 1956

By Anderson, Commissioner:

The initial decision filed by the hearing examiner held that certain of the charges of the complaint were
50 sustained by the greater weight of the evidence and ruled that others were not so supported; and the order contained in the initial decision requires cessation of the practices to which the first category of charges related and provides for dismissal of the latter. The cross-appeals separately filed by counsel for the respondent and by counsel supporting the complaint except to various rulings in that decision which adverse to the appealing parties' respective contentions in the course of the hearings below.

The complaint under which this proceeding was instituted charged that the respondent has engaged in unfair and deceptive acts and practices violative of the Federal Trade Commission Act in connection with the offering for sale and sale in commerce of its health insurance policies. From its office in Omaha, Nebraska, the respondent solicits sales of its policies to "white collar" workers located in the various States of the United States. No sales agents are employed by the respondent and all sales are promoted through the mails by means of pamphlets and a series of form letters describing the indemnities, benefits and advantages afforded by its policies. Sample policies are not included in the respondent's routine mailings to its prospective insureds.

The first of the exceptions interposed under the appeal of counsel supporting the complaint pertains to the initial decision's holding that the record does not support the complaint's charges of deception allegedly engendered through statements in the respondent's advertising that there is no age limit to which a member can continue his protection. In this connection, the complaint charges that the respondent has represented thereby that its policies provide continuing indemnification for losses resulting from sickness or disease so long as the policyholder makes premium payments within periods of time and in amounts fixed by the terms of such policies. In lieu of so providing, the policies specify that they can be cancelled at any time, for any reason, upon written notice by the respondent. For reasons stated in the Commission's findings as to the facts, we think that the hearing officer clearly erred in failing to find that the challenged statements have served to engender erroneous impressions and beliefs among prospective purchasers that the respondent's policies may be kept in

51 force at the option of the insured. Having elected to stress in its advertising that the policies contain no provisions precluding the insured, by reason of age, from continuing his selected protection against financial loss from sickness, the respondent, if it is to relieve its representation of its deceptive tendency thus generated, must make full disclosure of other relevant policy contingencies which foreclose the insured's exercise of any option in that respect.

The remaining exception urged under the appeal of counsel supporting the complaint relates to the initial decision's dismissal of the complaint's charges challenging, as false and misleading, the statement in the respondent's advertising that no medical examination is required. Even though examination by a physician is not required prior to issuance of a policy, the company by the terms of its policies has the right to examine the insured "so often as it may reasonably require" during the pendency of a claim, which provision is not referred to in the advertising. Concern over personal health is practically universal and medical examinations are held in dread and awe by many people. Proffered waivers in such respect constitute highly

material matters and erroneous impressions necessarily result unless they contain a full and complete disclosure of the facts in that regard.

We think that, when construed in the context in which used in the respondent's advertising, the statement emphasizing that no medical examination is required reasonably represents and implies that the respondent does not take into consideration the physical condition of the insured prior to or at the time of issuance of the policy when determining whether benefits will be paid. It was error for the hearing examiner to hold otherwise and to fail to reach conclusions that such representation is deceptive. Its falsity is evident from the fact that the physical condition of the insured prior to, contemporaneously with, and even 30 days subsequent to date of issuance of the policy are controlling considerations for securing respondent's insurance protection and payment of benefits.

Nor is it material that the application form and some of the respondent's letters mention good health as a requirement for applicants. As noted in the Commission's
52 accompanying findings as to the facts, many individuals may justifiably regard their current states of health as robust and vigorous even though they may have had ailments in times past presenting possibilities of recurrence or other future impairment to health. Prospective purchasers of insurance are entitled to rely on the sales representations made and are not under obligation to investigate whether promised waivers in medical or other requirements are in fact conditional and restricted in their scope.

The appeal of counsel for the respondent contends that the Commission lacks jurisdiction in this proceeding; and it argues that under the provisions of the McCarran-Ferguson Act (Public Law 15, 79th Cong., 15 U.S.C.A. § 1011-15), power to regulate the respondent's sales practices is vested solely in insurance authorities of the State of Nebraska, the State granting its corporate charter and where the respondent has its sole place of business. As previously noted, however, the respondent solicits sales of its policies solely by means of the mails among purchasers residing in states other than Nebraska and transmits them, when sold, to

purchasers through the same channels. For reasons stated in our opinion in the matter of the American Hospital and Life Insurance Company, Docket No. 6237, we do not believe that the statute admits of the construction placed upon it by the respondent. The hearing officer correctly found that the Commission had jurisdiction over such of respondent's practices in interstate commerce as might be found to be unfair and deceptive.

The respondent's appeal additionally urges that the Commission is estopped from maintaining these proceedings for the reason that its advertising matter was approved by a member of the Commission's staff in the course of conferences and correspondence occurring in 1950 and 1951. It appears that, after the Commission promulgated its trade practice rules relating to the advertising and sales promotion of mail order insurance, the respondent submitted copies of four pieces of advertising literature for a staff member's consideration and comment in the light of those rules. Those particular advertisements, or subsequently used revisions thereof, were received as exhibits in this proceeding; and the record indicates that the attorney

53 interposed no objections to such advertisements or the respondent's proposed revisions thereof as not in accord with those since rescinded trade practice rules. These matters notwithstanding, several of the advertising statements quoted in the complaint and alleged to be deceptive do not appear in those four particular exhibits but are contained in other disseminated promotional material. In these circumstances, it cannot be concluded that institution of this adjudicative proceeding and its determination on its merits s inequitable or improper; and such dispositon is clearly required in the public interest inasmuch as the respondent is vigorously contesting the merits of the charges and defending the legality of the challenged sales practices.

Even though the record situation respecting prior contacts by the respondent with Commission representatives were other than as noted above, the respondent's argument of equitable estoppel requiring suspension of these proceedings would be without legal merit. As an administrative agency charged with the protection of the public interest, the Commission is not precluded from taking action to that end because of mistaken action or lack of action on its part

in the past. P. Lorillard Co. v. F.T.C., 186 F. 2d 52 (C.A. 4, 1950); N.L.R.B. vs. Baltimore Transit Co., et al., 140 F. 2d 51 (C.A. 4, 1944).

Brief reference is warranted with respect to certain matters not raised by the appeals but considered in the course of our review. Additional charges in the complaint pertain to statements quoted from the advertising which are alleged to constitute representations that indemnification is provided by the policies for loss of time from one day up to 104 weeks for all sickness, except genital, occurring after the effective date of the policy; and other relevant charges allege that the advertising's promises of such benefits are contrary to the true facts for reasons, among others, that the actual policy terms specify reduced benefits for certain sicknesses and the exclusion of others. We concur in the hearing examiner's conclusions that certain of the policies' restrictions, limitations and exclusions which he has designated, as to which the promotional material is either entirely silent or presence of which is not clearly and adequately disclosed, serve to render false the advertised promises of benefits. We think, however, that the hearing examiner erred in failing to reach like conclusions respecting the advertising's failure similarly to clearly reveal the true facts of the policies' exclusions from coverage of all sickness sustained or contracted in consequence of use of intoxicants or narcotics, and also material facts relating to the reduced or prorated benefits afforded under the contracts in the event of the insured's subsequent purchase of additional insurance without due notice to the respondent. Appropriate findings in these respects are included in the Commission's findings as to the facts.

The respondent's appeal is hereby denied and the appeal of counsel supporting the complaint is granted. Accordingly, the initial decision is vacated and set aside, and our findings as to the facts, made on consideration of the whole record including the initial decision, and conclusions and order to cease and desist are issuing in lieu thereof.

Chairman Gwynne concurs in the result.

Commissioner Tait did not participate in the decision herein.

December 20, 1956.

Before Federal Trade Commission

Commissioners:

John W. Gwynne, Chairman
Robert T. Secrest
Sigurd Anderson
William C. Kern
Edward T. Tait

In the Matter of

Travelers Health Association, a corporation.

Docket No. 6252.

Separate Opinion of Chairman, John W. Gwynne, Chairman of Federal Trade Commission, dated December 20, 1956, and served January 7, 1957

Chairman Gwynne, Concurring in the Result.

The majority bases its conclusion of jurisdiction on reasons stated in the opinion in the matter of American
55 Hospital and Life Insurance Company, Docket No. 6237. I agree that there is jurisdiction, but for the reasons set out in this opinion.

Involved here, is the further interpretation of Public Law 15 (McCarran Act). The Joint dissent in the American Hospital and Life case sets out my views as to the general purposes and intent of the McCarran Act and as to its application to the facts in that case. There, respondent insurance company operated exclusively through agents in various states, in which it was duly licensed under the respective state laws. At the time of the issuance of the Commission order, every such state had adopted the Model Code, or equivalent legislation. The advertising practice complained of involved bundles of advertising matter mailed from the home office to the company's agents in the several states and disseminated there by such agents. There was no advertising by newspaper, radio, or television; nor did respondent solicit or sell policies by mail.

Section 2(b) of the McCarran Act provides in substance, that after January 1, 1948, the Federal Trade Commission Act shall be applicable to the business of insurance to the extent that such business is not regulated by state law. The question in American Hospital and Life and also in this case is: Are the advertising practices in question regulated

by state law. In the former case, the dissenting opinion concluded that the practices were so regulated and that, therefore, the Federal Trade Commission Act had no application.

In the instant case the essential facts were found by the Hearing Examiner to be as follows:

"Respondent, Travelers Health Association, is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Nebraska, with its office and principal place of business located at 1613 Farnam Street, Omaha, Nebraska. * * *

* * *

"Respondent is licensed only in the States of Nebraska and Virginia, although it transacts business by mail with residents of all the states. Its advertising, promotional activities and all other business practices originate in
56 and are carried on from its home office in Omaha, Nebraska. Its advertising is mailed from Omaha, its policies are issued there, premium payments are received, claims are filed, serviced and paid at or from that office. No policies are sold by or through agents. Respondent pays taxes in Nebraska on premiums collected from all policyholders excepting only those who live in Virginia. Taxes on premiums collected from residents of Virginia are paid to Virginia. Annual statements are filed in Nebraska and Virginia.

"Respondent does no newspaper or magazine advertising, but solicits sales by mailing, at intervals and in continuity, a series of circular letters to 'white-collar' workers. * * *"

The basis on which respondent denies the jurisdiction of the Federal Trade Commission is indicated by the following in its answer:

"For answer to the complaint respondent alleges that the Federal Trade Commission is without jurisdiction in this matter because in truth and in fact each and every activity of the respondent is regulated, supervised and otherwise overseen by the Director of Insurance and the Department of Insurance of the State of Nebraska, which under Nebraska state law, fully regulate such activities within the

meaning and scope of Public Law 15 enacted by the Congress of the United States, * * *."

And by the following from its brief on appeal:

"The Regulatory Statutes of the State of Nebraska, actually and actively enforced by the Nebraska Insurance Department, completely eliminate Federal Trade Commission jurisdiction.

"Public Law 15 provides the Federal Trade Commission Act shall be applicable to the business of insurance 'to the extent that such business is not regulated by state law.' The powerful Nebraska statutes and their actual enforcement by the Nebraska Insurance Department, regulate advertising conducted by Nebraska domiciled companies writing sickness insurance, comprehensively, completely and effectively, whether within or without the state."

57 The question therefore is: Do the statutes of Nebraska regulate the business of insurance in other states to such an extent that, under the McCarran Act, the Federal Trade Commission Act is not applicable?

It is my opinion that they do not for the following reasons:

First, the Nebraska statutes, for the most part do not purport to operate beyond the State of Nebraska. The insurance laws of Nebraska include the so-called Model Code adopted by many states following the passage of the McCarran Act. The language discloses that the Nebraska statutes were intended to operate only within that state. This is shown by the following:

"44-1501. Insurance; trade practices; regulation. The purpose of sections 44-1501 to 44-1521 is to regulate the trade practices in the business of insurance, in accordance with the intent of Congress of the United States as expressed in Public Law 15 of the 79th Congress, by defining, or providing for the determination of, all acts, methods, and practices which constitute unfair methods of competition and unfair or deceptive acts and practices in this state, and to prohibit the same."

"44-1503. Unfair methods of competition; deceptive acts and practices; prohibited. No person shall engage in this

state in unfair methods of competition or in unfair or deceptive acts and practices in the conduct of the business of insurance."

"44-1506. Unfair methods of competition; deceptive acts and practices; charges; notice of hearing. If the Director of Insurance shall have reason to believe that any person is engaging in this state in any such unfair or deceptive act or practice in the conduct of such business, * * *".

"44-1515. Other unfair methods of competition and deceptive acts and practices; report by Director of Insurance; hearing. If the Director of Insurance shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business, * * *". (Emphasis supplied in all instances)

58 Section 44-750, 44-751 and 44-752 also apply only to companies or agents doing business in Nebraska.

Respondent also relies upon Section 44-712.01, which provides:

"Sickness and accident insurance; Director may approve policies for another state; rule.

"Sec. 3. If any policy is issued by an insurer domiciled in this state for delivery to a person residing in another state, and if the official having responsibility for the administration of the insurance laws of such other state shall have advised the director that any such policy is not subject to approval or disapproval by such official, the Director of Insurance may by ruling require that such policy meet the standards set forth in section 44-712, and sections 44-713 to 44-728."

Sections 44-713 to 44-728 have to do with standard policy provisions, proof of loss, actions on the policy, etc., rather than to advertising.

Even if the statutes, or any of them, could be construed to operate generally in other states, in the same sense that they operate in Nebraska, they would be of doubtful constitutionality. As a general principle, a state is a sovereign whose powers are limited to its own boundaries and to protecting its own citizens. It is true, instances may be

found where the carrying out of these powers may affect the people and even the laws of other states. Some of these are illustrated in cases in respondent's brief. I do not agree, however, that these cases are "convincing court decisions indicating that the state of domicile may police acts beyond the borders of such state."

In Alaska Packers Association vs. Industrial Accident Commission of California, 1935, 294 U.S. 532, a contract made in California for work to be performed in Alaska contained a provision that the parties would be bound by the Alaska Workmen's Compensation law. Nevertheless, a recovery under the California Act, which state claimed jurisdiction in such cases, was upheld by the court. In Hoopeston Canning Company vs. Cullen, Superintendent of Insurance of New York, 1943, 318 U.S. 313, the court held that

59 Reciprocal Insurance Associations which insured property located in New York, although their attorneys-in-fact were located in Illinois, and the contracts of insurance were signed and checks in payment of losses were mailed in Illinois, were subject to regulation under New York laws. Some other important facts were that most of the insurance covered real property in New York; the Associations had for years been licensed to do business in that state and had many actual contacts there. In Watson vs. Employers' Liability Assurance Corporation, 1954, 348 U. S. 66, the court held that a Louisiana statute permitting direct suit against foreign liability insurers, in the parish where the accident occurred, was enforceable in spite of the fact that the insured party lived outside the state, that the contract was made outside the state, and that the law there recognized the validity of a limitation prohibiting such direct suit. I do not construe Hammond Packing Company vs. State of Arkansas, 1909, 212 U. S. 322, as holding that the Arkansas statute "could validly be applied to the extra-territorial operations of domestic corporations." As the Supreme Court put it, "the interpretation which the court below gave to the statute was that, it did not purport to forbid or affix penalties to acts done beyond the state, but that it simply forbade a corporation from continuing to do business within the state after it had done, either within or outside the state, the enumerated acts."

In Watson vs. Employers' Liability Assurance Corporation, supra, the court said, "As a consequence of the modern

practice of conducting widespread business activities throughout the entire United States, this court has in a series of cases held that more states than one may seize hold of local activities which are part of multistate transactions and may regulate to protect the interests of its people, even though other phases of the same transaction might justify regulatory legislation in other states."

These state statutes seize upon various phases of far-flung activities to justify the attempt to protect the interests of the state or is citizens. These laws variously assert jurisdiction on such facts as issuance of a corporate charter, licensing of a foreign corporation to do business in the state, situs of the making of the contract, or of its performance, location of the property involved, place of the accident involved, residence or citizenship of a person affected, and many others. For example, the Florida Unauthorized Insurers Process Act provides that any foreign insurer, not licensed in Florida, which effects issuance or delivery of insurance contracts to Florida residents by mail, thereby appoints the Insurance Commissioner of Florida its agent for service of process in any action arising out of any such contract. In Parmalee vs. Iowa State Traveling Mens Association, 1953, 206 F. 2nd 518, the court, after considering both the due process clause and the McCarran Act, held the statute was enforceable where the facts brought the case strictly under the provisions of the law, which Florida had passed to protect its own citizens. In Parmalee vs. Commercial Travelers Mutual Accident Association of America, 1953, 206 F. 2nd 523, where the policy was delivered by mail to a resident of Kentucky, who thereafter moved to Florida and resided there when the cause of action arose, the court held that the suit could not be maintained under the statute.

The intent of these various statutes is to protect the rights of the citizens of the state passing the laws. It is difficult to see how such laws could be sustained on any other ground. Even then, the court in each individual case must balance the right sought to be protected against the rights of other states or their citizens,—which rights might be adversely affected. The balancing of these rights, one against the other, involves the application of the due process clause, and the decision in each case depends upon the particular facts. It is difficult to see how the enforcement,

in other states, of Nebraska advertising laws would be of benefit to the citizens of Nebraska.

Finally, this type of law (that is, a law purporting to protect the people of another state from deceptive advertising) can hardly be said to be the type of law referred to in Section 2(b) of the McCarran Act. Section 2(b) makes the Federal Trade Commission Act applicable to the business of insurance to the extent that such business is not regulated by state law. I think this refers to the laws of the state whose citizens are being affected by the advertising and not to laws of some other state operating extra-territorially.

61 The McCarran Act speaks of the "continued regulation * * * by the several states of the business of insurance." Section 2(a) says in part: "The business of insurance and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business." Prior to U. S. vs. South-Eastern Underwriters Association, 1944, 322 U. S. 533, the regulation of insurance was a problem for the individual state, subject only to constitutional restraints other than the commerce clause. It was evidently the Congressional intention to maintain each state system, free from the obstacles recently created by South-Eastern Underwriters. This protection of the individual state from the paramount federal power is difficult to reconcile with the theory of making one state subject to the laws of another state, in which laws they have had no part in making.

Reference has already been made to constitutional difficulties which might arise in any attempt to enforce the Nebraska statutes in other states. We will assume that Congress was also aware of these possibilities. Consequently, we should hesitate to adopt the interpretation of the McCarran Act proposed by respondent, unless it is clear that Congress so intended. There is nothing in the law or in the legislative history to indicate such an intention.

Finally, respondent's interpretation is contrary to the general philosophy of our dual system of government and would be confusing and ineffective in operation. We may assume that Nebraska has very good laws regulating insurance and that they are adequately enforced. Suppose we also assume that, through its corporate charter provisions or otherwise, Nebraska may exercise some actual control

over the mail order business done in states having no regulation of advertising. Illinois might also insist on enforceing different rules as to its corporations, operating by mail in these same states. This would create a situation of confusion which would make any law enforcement extremely difficult. Under the McCarran Act, a state may enact laws protecting its citizens against certain phases of insurance activity. To the extent that a state does not (or for constitutional reasons cannot) adop such legislation, the McCarran Act provides a secondary defense. That defense is not
62 the laws of some other state in which the insurance company is chartered or has its principal place of business; the defense consists of the applicable laws of the federal government. This is the fundamental purpose of the McCarran Act.

December 20, 1956

Before Federal Trade Commission

Transcript of Testimony

R. ELWOOD PRATT, called as a witness on behalf of Travelers Health Association in support of its motion to dismiss, testified as follows on November 2, 1955:

Direct examination by Mr. C. C. Fraizer:

I live in Omaha, Nebraska. I have been a director of Travelers Health Association since 1921, a full time employee since 1923, and its Treasurer, General Manager and Chief Executive Officer since 1929. I am responsible for formation of policies and procedures governing the operation of the Association and for the tenor of all advertising and promotional material used. All employees and department heads of the Association work under my direction and carry out my instructions (Tr. 4, 5).

* * * * * * *

R. Elwood Pratt, called as a witness on behalf of the Federal Trade Commission, testified as follows on November 2, 1955:

Examination by Hearing Examiner Cox:

We use the same advertising material for all our policies. The only distinction would be that our application blank for membership, and other material, distinguished the difference in benefits provided by the various forms of contract. The other advertising is uniform regardless of the policies (Tr. 11, 12).

Direct examination by Mr. W. A. Somers:

I am the same R. Elwood Pratt that was previously on the stand and I have been sworn. I am here to take
63 the place of Mr. Caywood, who was subpoenaed, and to give you any information you want (Tr. 12).

• • • • • • •

"Mr. C. C. Fraizer: Just one moment. I want to, if you please, your Honor, place in the record, which, as I understand it under the rules will remain, or may remain, an objection or a reservation throughout, without reptition, namely that Respondent asserts the position that Federal Trade Commission is without jurisdiction in this matter and that in truth and in fact, each and every activity of the Respondent, including all matters involved in the present issue, are regulated, supervised and otherwise overseen by the Director of Insurance and the Department of Insurance of the State of Nebraska, in that under Nebraska law the Director and the Department do actually, fully regulate such activities within the meaning and scope of Public Law 15, enacted by the Congress of the United States.

"Consequently objection is made to the question and to further questions during this hearing, for the reason stated.

"Hearing Examiner Cox: You understand the question of jurisdiction is never waived and taking of evidence will be subject to continuous objection on that ground, and counsel are further informed that exceptions are automatically given to any adverse rulings. It is not necessary to note exceptions in the record, so you may answer, Mr. Pratt, if you remember what the last question is (Tr. 13, 14).

Direct examination by Mr. Somers resumed:

The Association used no newspaper or magazine advertisement during the period January 1, 1953 to October 12,

1954, inclusive. Its advertising during this period was conducted entirely by direct mail (Tr. 14).

• • • • • • •

Commission's Exhibit No. 1 is our application blank, a copy of which accompanies every mailing (Tr. 15).

Commission's Exhibit No. 2-A is the 49th annual report of the Association as of December 31, 1952, and Commission's Exhibit No. 2-B is the 50th annual report as of December 31, 1953 (Tr. 16).

64 Commission's Exhibit No. 3 is what we call the "right amount" slip, instructing applicants to buy the proper amount of insurance to fit their income (Tr. 16).

Commission's Exhibit No. 4 is "Our Plan Explained" leaflet (Tr. 17).

Commission's Exhibit No. 5 is a slip which carries a testimonial from a member on one side, and the date to which the membership fee pays on the other side (Tr. 17).

Commission's Exhibits Nos. 6 to 51 are a series of sales letters to prospects, and of record slips showing the number and continuity of those letters, mailed during the period January 1, 1953 to October 12, 1954, which is the period under review. Some are first letters to prospects, others are second and successive letters to the same prospects, and still others are letters to former members of the Association who have lapsed their policies and who are invited to rejoin the Association (Tr. 17, 22).

• • • • • • •

Commissions Exhibits Nos. 52 through and including 58 are various policy forms which were issued by the Association, with slips attached showing the number of each issued in the years 1953 and 1954 (Tr. 23, 25).

• • • • • • •

One of the Association's applications for membership, Commission's Exhibit No. 1, is enclosed in every mailing. The obtaining of applications for insurance is the intended result of all our advertising; we are trying to get applications for membership (Tr. 27, 28).

Commission's Exhibits Nos. 2-A and 2-B, annual reports of the Association, are distributed to each member of the Association and are used frequently as enclosures with sales letters to demonstrate to the prospect the financial

responsibility, worth and accomplishments of the Association (Tr. 28).

Commission's Exhibit No. 3, the "right amount" slip, is enclosed with some of the Association's mailings of form letters and is used to encourage prospects to buy the proper amount of health insurance; in other words, not to over insure (Tr. 28, 29).

65 Commission's Exhibit No. 4, a leaflet entitled "Our Plan Explained," is used to send to prospects for membership as enclosures with our mailings. Most of the information contained therein contained as a part of Commission's Exhibit No. 1, the application for membership. We used it during the period under review, the years 1953 and 1954, and previously. I would not say we included it with all our form letters (Tr. 29, 30).

• • • • • • • •

Commission's Exhibits Nos. 1 and 50, excluding the odd numbered exhibits between No. 7 and No. 49, were disseminated by mail. I think they were sent to prospects in all the states. We submitted this advertising material to the Federal Trade Commission and it was approved in 1950. Our Attorney, Mr. Fraizer, can give you proof of that approval (Tr. 32, 33).

• • • • • • • •

Thereupon, the Hearing Examiner said that Mr. C. C. Fraizer might state for the record the answer to the question of whether the Association had proof of such approval (Tr. 33, 34).

C. C. Fraizer, as Attorney for Travelers Health Association, made a statement, and was sworn after the statement had progressed but before completion, as follows:

As counsel for the Association, I interested myself in the development of the Federal Trade Commission so-called mail order trade practice rules promulgated in the year 1950; that in the early part of 1950 and extending into the early part of 1951, I visited the Federal Trade Commission and conferred and corresponded repeatedly and at length with Mr. James W. Millspaugh, Attorney for the Rules Administration Bureau of Industry Cooperation, Division of Trade Practice Conferences of the Commission. I presented specimens of advertising then being used by Travel-

ers Health Association, and for the most part it was
66 not criticised by Mr. Millspaugh, but there were certain items as to which Mr. Millspaugh suggested changes and revisions. Within a reasonable time, such changes and revisions were made (Tr. 34).

A portion of the correspondence between Mr. Millspaugh and myself is contained in Commission's Exhibits Nos. 59 to 65, inclusive (Tr. 35, 36, 37, 38, 39).

• • • • • • •

My relations with Mr. Millspaugh were a combination of personal interviews at the office of the Federal Trade Commission and the correspondence (Tr. 37).

• • • • • • •

Hearing Examiner Cox said that he had taken Mr. Fraizer's statement on this matter as a professional statement of an attorney, and that he was willing, as Hearing Examiner, to accept it on that basis, but for the sake of the record, Mr. Fraizer should be sworn. Mr. Fraizer swore that the statement he made and the correspondence with the Federal Trade Commission were the truth and nothing but the truth, and that any questions he might answer thereafter relating to these matters would be the truth and nothing but the truth (Tr. 40).

• • • • • • •

Direct examination of Mr. R. Elwood Pratt by Mr. Somers resumed:

We mail our advertising material to lists of persons in all states, comprised entirely of names of friends, acquaintances and business associates of our members, who those members think would be or should be interested in the benefits that we have to offer. We neither rent nor purchase mailing lists (Tr. 41).

We issue our policies in Nebraska; our policyholders live in every state in the union to whom policies are sent by mail. We have no separate accounting of the number of policies and the amount of premiums received from
67 policyholders in the state of Nebraska, nor for any other states, except Virginia, in which state we are licensed and in which state we file a separate report (Tr. 41, 42, 43).

Commission's Exhibit 70 shows our total premium income for the years 1952, 1953 and 1954. I do not know the percentage of our business done in Nebraska; we consider it all Nebraska business except what is done in Virginia. The greatest proportion of these premium receipts come from policyholders outside of the States of Nebraska and Virginia (Tr. 43, 44, 45).

Travelers Health Association was incorporated in Nebraska in January, 1904. In 1953, we were licensed in Nebraska and Virginia only. Our letters of solicitation are sent all over the United States by mail. Application blanks (Commission's Exhibit No. 1) are filled out and returned to us by mail; policies issued, premium notices, premium payments, claims of policyholders, checks in payment of claims, doctor's statements, if necessary, are all transmitted by mail (Tr. 46, 47, 48, 49).

• • •

We keep an alphabetical list only of our policyholders; but keep no list of policyholders by states, except those residing in Virginia, which is for purpose of computing and paying the Virginia premium tax; premium taxes on premiums collected from all other states are paid to Nebraska (Tr. 54).

• • •

Commission's Exhibits 56-E, 57-E and 58-E indicate the number of policies issued in the years shown (Tr. 55).

• • •

Commission's Exhibits 72, 73 and 74 designate the amount of business done in Virginia during the years 1952, 1953 and 1954, respectively (Tr. 56, 57, 58).

• • •

68 Cross-examination by Mr. C. C. Fraizer:

The sentence: "There is no age limit to which a member may continue protection," being Item 1, paragraph 3 of the Complaint, was and is true; we have no age limit to which a member may continue, having many members past eighty years of age, probably some up to age ninety (Tr. 59, 60).

The sentence: "There is no age limit to continue membership and no increase in premiums to those of advanced age," included in same subdivision and same paragraph

of Complaint, was and is true; the Association has never cancelled the policy of a member on account of advanced age, and there is no increase in premiums because of advanced age (Tr. 60, 61).

The sentence: "At home, in the hospital, in a hotel—no matter where you are—when sickness prevents you from working and you have physician's care, we pay," is true (Tr. 61, 62). • • • The Association has never rejected a claim because of geographical location of the insured claimant (Tr. 67).

With regard to the statement in the advertising: "You don't have to choose your diseases, we cover all diseases, except genital," the Association has never rejected or disallowed a claim based upon any disease, except a genital disease (Tr. 67, 68).

• • •

The American Medical Illustrated Dictionary by Dr. W. A. Newman Dorland, A.M., M.D., FACS., Lt. Col. MRC., U.S. Army, Member of the Committee on Nomenclature & Classification of Diseases of the American Medical Association, Editor of American Pocket Medical Dictionary, published in 1944, defines "genital" as—"Genital: L. Genitalis, Genital, pertaining to the organs of generation or to reproduction" (Tr. 70, 71).

Webster's New Collegiate Dictionary, published in 1953 by G. & C. Merriam Company, defines "genital" as—
69 "Genital: adj. OF., for L. Genitalis, fr. genere, gignere, to beget. Relating to generation or the sexual organs" (Tr. 71).

The Association in adjusting claims has never rejected a claim in violation of the phrase contained in the advertising as follows: "Benefits are paid for one day to one hundred and four weeks. All diseases, except genital, are covered," and as a matter of daily claims practice, it was observed (Tr. 71, 72).

Our Association is not an accident insurance company and offers no benefits for accident, offering sickness insurance benefits only, and we so advertise and our policies so provide (Tr. 72).

• • •

With reference to the statement in the advertising, "No medical examination is required," the Association in prac-

tice does not require a medical examination prior to issuance of a policy. We require medical proof of claim and claimant must be under the care of a registered medical doctor other than himself, but so far as gaining admission to the Association is concerned, no medical examination is required (Tr. 75, 76).

Our advertising circular letters are mailed in series; a normal series of letters to prospects consists of eight letters, the first three being sent approximately thirty days apart, the remaining five being sent quarterly—at three month intervals (Tr. 76, 77).

The letters are sent to prospects whose names are sent in to us by our members, and are very rarely sent to anyone else. We encourage our members to send us names of people to whom we may send our series of eight letters, offering small tokens to those who send in names. We accept applications from white collar workers—people classified as select and preferred risks from an occupational standpoint (Tr. 77, 78).

70 In actual practice, the Association has never cancelled the policy of a member for any reason other than belated discovery of false statements or misrepresentations or claims for chronic recurrent physical disabilities. When claim experience has shown the individual is no longer insurable from a health insurance standpoint, cancellation occurs; we do not write non-cancellable health insurance; we write cancellable health insurance. It would be impossible to write non-cancellable insurance at the premium we charge, which averages $16 per year (Tr. 78, 79).

Our policy forms are prepared in conformity with the Uniform Policy Provisions Law enacted in Nebraska and in all other states, except two or three, and are approved by the Nebraska Insurance Department (Tr. 79, 80).

• • •

With reference to the advertising statement: "Benefits are paid for loss of time occurring more than thirty days after policy date, on account of practically all diseases, except genital," in adjusting and settling claims, we do not pay claims based upon disability caused by hernia, which is not a dsease (Tr. 82, 83).

• • • •

Our Association is a member of the Health & Accident Underwriters Conference and of the International Federation. At meetings of these organizations, loss ratios and company practices are discussed. The approximate loss ratio of disability insurance companies in the Unted States is about 50%. Our loss ratio is above 70%. Loss ratio is the ratio of the dollars returned to the insured in claims, as compared to the total dollars that he pays in premiums (Tr. 84, 85).

• • •

Redirect examination by Mr. Somers:

I make the determination myself as to whether or not a claim submitted is covered by our policy. I am not a
71 doctor and have never gone to medical school. When a person submits a claim and there is a question as to whether or not it is covered by the policy, or a question as to whether the condition still exists, we occasionally have that person go to a doctor, whom we appoint, to be examined (Tr. 86, 87).

We have policyholders from every state in the Union. We have not submitted our policy forms for approval to any state other than the states of Nebraska and Virginia (Tr. 87, 88).

• • •

Mr. C. C. Fraizer, Attorney for Travelers Health Association, volunteered to resume the stand, and testified as follows:

Examination by Hearing Examiner Cox:

The Association's application blank containing advertising on its reverse side (Commission's Exhibit No. 1) and the advertising leafiet "Our Plan Explained" (Commission's Exhibit No. 4) were revised by the Association, and as revised, approved by Mr. Millspaugh (Tr. 95, 96, 97, 98). The language Mr. Millspaugh actually used after we made certain changes and amendments was, that is in harmony with the so-called Trade Practice Rules. I don't know that he used that exact language (Tr. 96).

• • •

Respondent's Exhibits Nos. 1 through 6, together with Commission's Exhibits Nos. 59 through 65, constitutes the complete correspondence between Mr. Millspaugh and myself (Tr. 101, 102).

• • •

"Mr. C. C. Frazier: Exhibits Numbers 1 and 4 are, were the subject of the correspondence and the subject of our, or my conferences with Mr. Millspaugh, and as appearing in the record, said exhibits numbers 1 and 4 are the respective documents, as what I choose to call approved by Mr. Millspaugh, as being in harmony with the Mail Order Rules.

72 "Hearing Examiner Cox: Those are the only two?

"Mr. C. C. Fraizer: That is correct.

"Hearing Examiner Cox: That you are saying that about?

"Mr. C. C. Fraizer: That is correct" (Tr. 103, 104).

• • •

Motion to Dismiss Complaint

"Mr. C. C. Fraizer: If your Honor please, at this point, the counsel for the Federal Trade Commission having rested, we respectfully move the dismissal of the complaint for reasons stated in our motion to dismiss as filed in both documentary and oral evidence in support thereof, plus the record, the testimony and the exhibits as offered by counsel for the Federal Trade Commission at this hearing up to the present time, and that the complaint be dismissed for lack of proof.

"Hearing Examiner Cox: All right, now assuming the Federal Trade Commission has rested, assuming that motion has been filed and it has been overruled for purposes of the record, is there any further testimony or evidence that the Respondent wants to present?

"Mr. C. C. Fraizer: Yes" (Tr. 104, 105).

• • • • • • •

R. ELWOOD PRATT, recalled as a witness on behalf of Travelers Health Association, testified as follows on November 3, 1955:

Direct Examination.

By Mr. T. J. Frazier:

We regularly receive various rules issued by the Nebraska Insurance Department, and I am familiar with the department's Rule 16 pertaining to advertising (Respondent's Exhibit No. 7). Pursuant thereto, we keep a complete file of all advertising issued and that file is available to the Insurance Department Examiners when making ex-
73 amination of the Association, or at any time they care to see it. That file contains the advertising exhibits previously introduced at this hearing, as well as other advertising matter issued by the company prior to the period covered by exhibits already received in this hearing, as well as subsequent to the issuance of this Complaint (Tr. 107, 108).

We do not regularly send items of advertising to the Nebraska Insurance Department. They have not to my recollection ever requested that we send to them a copy of all our advertising. The Department Examiners, during periodic examinations of the company at its home office, have inspected this file on numerous occasions (Tr. 108).

* * * * *

Commission's Exhibit No. 4, "Our Plan Explained" leaflet, was formerly mailed generally to prospects with advertising letters [solicitating] applications; general mailing of Exhibit No. 4 was discontinued on February 11, 1953, after which date it was mailed for a while to a very limited extent to the list of lapsed members soliciting them to rejoin; it is not used at all now. We mail as many as twenty-eight letters to prospects who are lapsed members, feeling justified in continuing to encourage their return to active membership in the Association over a long period of time, and we mail advertising on a much longer basis to lapsed members than we do to new prospects (Tr. 109, 110).

Commission's Exhibits Nos. 52 through 58, our policy forms, have been in use by the Association in their present language and wording since 1949 (Tr. 111).

• • • • • • • •

"Q. Have you ever received a letter wherein a policyholder made a complaint that the policy failed to provide the benefits which had been advertised in any material sent to them as a prospect? A. Ever is a long time, but not to my recollection" (Tr. 112).

The company has never reduced a claim payment by pro rating because of other insurance the policyholder may have (Tr. 112).

• • • • • • • •

74 Cross-Examination

By Mr. Somers:

We are licensed in the state of Virginia but have not to my knowledge submitted our advertisements to that state (Tr. 113).

• • • • • • • •

The Nebraska Department of Insurance examines our company every three years or oftener. When they come in to make their examination they go through whatever they see fit, and how much attention they pay to any particular items I cannot tell you. Our files are all available. (Tr. 114).

• • • • • • • •

William H. Healy, called as a witness on behalf of Travelers Health Association, testified as follows on November 3, 1955:

Direct Examination.

By Mr. T. J. Fraizer:

I am and have been for over four years Chief Departmental Attorney or Counsel for the Nebraska Department of Insurance, and my duties are to act as representative of the Department in all legal matters exxcept those which are referred to and handled by our Attorney General. That

includes legislative matters and Nebraska premium tax statute enforcement. The Nebraska Insurance Department collects premium taxes from Travelers Health Association covering premiums paid by all policyholders residing in Nebraska and all other states except Virginia (Tr. 116, 117, and 118).

Respondent's Exhibit No. 7 is an authentic copy of Nebraska Insurance Department Rule No. 16, and pertains to sickness and accident insurance. The primary purpose of this rule was to require each company to maintain a file of its advertising to which the Department could resort in event any complaint was filed against a company writing this type of insurance. The Department has received complaints based on advertising, and when that occurs the Department requests the company to discontinue the advertising if in the Department's opinion it is offensive or a violation of law (Tr. 118, 119, 120, 121).

75

The Department has never entered a formal order requiring discontinuance of certain types of advertising of such a company. We require one company to submit its advertising to the Department for approval in advance of its dissemination. On one issue of advertising by that company the Department made recommendations that the advertising be reformed and changed, and to the best of my knowledge that was done (Tr. 121).

• • • • • • •

Inquiries and complaints received by the Nebraska Insurance Department do not as a matter of course come to my attention, and are brought to my attention only when the individual handling the complaint has difficulty with the particular complaint and wants advice on it, and often times I handle specific complaints myself. Ordinarily I would not take notice of it unless it was rather serious and involved a question of law, except for one particular company as to which I handle all complaints. That one company is not Travelers Health Association (Tr. 122, 123).

• • • • • • •

No complaint against Travelers Health Association pertaining to any advertising material or to policy coverages

not conforming to benefits described in advertising has been brought to my attention (Tr. 124).

• • • • • • •

Cross-Examination.

By Mr. Somers:

I have never gone through respondent's file kept in compliance with Rule No. 16 (Respondent's Exhibit No. 7) of the Nebraska Insurance Department. Their advertising material has never been submitted to me for approval (Tr. 131).

76

• • • • • • •

Renewal of Motion to Dismiss Complaint

At the close of the proceedings of November 3, 1955, the following motion and ruling were made:

"Mr. T. J. Fraizer: Respondents desire to renew its motion previously filed in this complai[illegible] case, to dismiss the action, to dismiss the complaint, for the reason that there is no further public in[illegible]est in the matter and there is no reason for further de[illegible]rations or further considerations of the complaint, as more fully set out in the motion.

"The Respondents further move for a dismissal of the complaint because of lack of evidence introduced herein by the complainant Commission and based upon Respondents having met the burden of affirmative proof as set forth in its answer to the original complaint.

"Hear Examiner Cox: Also we understand that the motion as to jurisdiction is always pending. It does not need to be renewed. • • •

"In connection with the motion which has been filed in Washington to dismiss, and which was referred to at the opening of this hearing, as not having been seen by the Hearing Examiner, the exhibits and affidavits filed with that motion will be considered as part of the record and will be considered in connection with the final disposition of that motion" (Tr. 138, 139).

• • • • • • •

THIS FLAP IS GUMMED, READY TO SEAL

NO ENVELOPE, NO STAMP NECESSARY

FOLD, SEAL AND MAIL

CHECKS OR MONEY ORDERS MAY BE ENCLOSED WITH SAFETY.

APPLICATION FOR MEMBERSHIP

I enclose $_____ and apply for a _____ membership in the
(Insert $2, $4, $6 or $8) See schedule back page (Insert Class S, D, A or B)

Travelers Health Association of Omaha, Nebraska, to be based upon the following statements of facts which I represent to be true and complete, whether written by me or not. I understand and agree that said statements shall form a part of the contract of insurance, and the falsity of any statement in this application shall bar the right to recovery if such false statement is made with the intent to deceive or materially affects either the acceptance of the risk or hazard assumed by the Association.

I am a white person of good moral character.

1 Name in full

2 Town and State where born. | Month | day | and year when born. | Age

3 Of What Country Are You a Citizen? | Are You Married? | Height Ft. In. | Weight

4 P. O. Address Where Notices are to be sent Street | City or Town | Zone | State

5 Residence Address Street | City or Town | State

6 Name of Firm | Wholesale or retail | Line of goods sold

7 Address of Firm | City or Town | State | Are you a member of firm?

8 My occupation is (tell what your position is and what work you do) | How long with present firm?

9 Have you any other business? If so what? | Will the total benefits provided by your health insurance, including this policy, exceed your earnings?

10 Has any life, health or accident insurance company or association ever rejected your application for insurance or membership, cancelled your insurance or declined renewal, expelled you or requested you to resign?

11 If so, give date, name of organization and reason for such action.

12 Have you ever received indemnity for sickness or accidental injuries?

13 If so, give dates, names of organizations, and amounts received.

14 Have you any other health or accident insurance? If so, list the organizations and benefits provided by each.
(Accident)

(Sickness)

15 Are you sound physically? | 16 Are you now in good health? | 17 Have you any physical defect or deformity?

EVERY QUESTION MUST BE FULLY ANSWERED

18 Are you blind in either eye? | Have you had any eye trouble? | If so, give kind, dates, etc.

19 Are you deaf in either ear? | Have you had any ear trouble? | If so, give kind, dates, etc.

20 Have you ever undergone any surgical operation? If so, name it, give date and particulars

21 Have you now or have you ever had any of the following (ANSWER EACH QUESTION SEPARATELY) and if "Yes" give full details below:

Nervous Trouble?	Rectal Trouble?	Tuberculosis?	Influenza?	Asthma?
Brain Trouble?	Heart Trouble?	Rheumatism?	Bronchitis?	Malaria?
Bladder Trouble?	Skin Disease?	Arthritis?	Tonsilitis?	Paralysis?
Kidney Trouble?	Appendicitis?	Neuritis?	Pyorrhea?	Ulcers?
Gall Bladder Trouble?	Varicose Veins?	Lumbago?	Diabetes?	Tumor?
Stomach Trouble?	Venereal Disease?	Erysipelas?	Syphilis?	Cancer?

DETAILS:

22 Do you now have or have you ever had any chronic ailment, or any serious disease? If so, give full particulars.

23 (a) How often have you been treated by a doctor or dentist in the last two years? | 23 (b) For what did he treat you?

24 Give name and address of doctor.

25 Give dates and full particulars.

26 How much time did you lose from work?

27 **Beneficiary Must be a Relative, Dependent, Fiancee, Legatee or Estate of Applicant.**

Beneficiary (Given name in full) .....

Street and Number .....

Town ..... State .....

Relationship .....

SIGNATURE OF APPLICANT .....

Dated at ..... this ..... day of 19

Accepted ..... Ctf. No. .....

Recommended by ..... Mem. No. .....

Commission's Exhibit 1.

FROM

Co. 1-id

Postage Will Be Paid by Addressee

No Postage Stamp Necessary If Mailed in the United States

BUSINESS REPLY ENVELOPE
FIRST CLASS PERMIT, No. 472, Sec. 34.9 P.L.&R., Omaha, Nebr.

BENEFITS and COST

WOMEN

CLASS	S	D	A	B
BENEFITS PER WEEK MAXIMUM	$15.00	30.00	45.00	60.00
NUMBER WEEKS MAXIMUM	52	52	52	52
NON-CONFINING WEEKLY BENEFITS	$ 7.50	15.00	22.50	30.00
NUMBER WEEKS NON-CONFINING MAXIMUM	10	10	10	10
ANNUAL COST ESTIMATED	$12.00	24.00	36.00	48.00
MEMBERSHIP FEE	$ 2.00	4.00	6.00	8.00

Choose the Right Amount!

The total benefits from all of your health insurance should nearly equal but never exceed your earnings. Apply for the Class best suited for you.

Diseases Covered

Benefits are paid for loss of time occurring more than thirty days after policy date on account of practically all diseases, except genital. We pay for one day or more of total disability, whether confined within doors or not. Benefits due to tuberculosis, neuritis, arthritis, rheumatism, nervous or mental trouble limited to half for up to ten weeks.

See policy for complete provisions.

TRAVELERS HEALTH ASSOCIATION

FARNAM BUILDING - 1613 FARNAM STREET

R. E. PRATT, TREASURER

OMAHA 2, NEBRASKA

FEDERAL TRADE COMMISSION

6252

Travelers Health Assoc.

11/2/65 Pratt

ELECTRICOUNTAL, INC., Official Reporter

V. Eilert

INCORPORATED JANUARY 2, 1904
UNDER THE INSURANCE LAWS OF THE
STATE OF NEBRASKA

OFFICERS AND DIRECTORS

GRANT C. CAYWOOD, President — EUGENE C. DINSMORE, Secretary
ALVIN F. BLOOM, Vice President — WILLIAM E. PRATT, Assistant Treasurer
R. ELLWOOD PRATT, Treasurer and Manager

FILL OUT THIS APPLICATION BLANK AND FORWARD WITH MEMBERSHIP FEE TO

R. E. PRATT, Treasurer

BENEFITS and COST

MEN

CLASS	S	D	A	B
BENEFITS PER WEEK MAXIMUM	$25.00	50.00	75.00	100.00
NUMBER WEEKS MAXIMUM	104	104	104	104
NON-CONFINING WEEKLY BENEFITS	$10.00	20.00	30.00	40.00
NUMBER WEEKS NON-CONFINING MAXIMUM	10	10	10	10
ANNUAL COST ESTIMATED	$16.00	32.00	48.00	64.00
MEMBERSHIP FEE	$ 2.00	4.00	6.00	8.00

This is an assessment association and no definite cost is guaranteed, but experience leads us to believe that this estimate will be subject to very little variation.

Who is Eligible

Any white person over eighteen years of age, of good moral character and in good general health whose occupation at the time of application is classified as a select or preferred risk and who in the opinion of the Board of Directors is a desirable risk is eligible to membership in this Association, provided that if such applicant is a man he may not be over fifty-five years of age and if a woman, not over fifty years of age.

There is no age limit to which a member may continue protection.

Commission's Exhibit 2A.

p.77

Mueller, McPherren & Judd
CERTIFIED PUBLIC ACCOUNTANTS
Omaha, Nebraska

January 2nd
1 9 5 3.

Travelers Health Association,
300 Farnam Building,
Omaha 2, Nebraska.

Gentlemen:

We have made a detailed cash audit of the financial records of the Travelers Health Association for the year ended December 31, 1952, and we find that the income due the Association from the various sources has been duly accounted for and that all disbursements are correctly stated and sufficiently vouched.

Ownership of all cash, mortgages, and securities was duly verified or confirmed.

We hereby certify that the attached Financial Statements, consisting of Assets & Liabilities and Receipts & Disbursements, set forth the financial position of the Travelers Health Association as of December 31, 1952, and reflect operating results for the year ended that date.

MUELLER, McPHERREN & JUDD
BY
Certified Public Accountant.

TRAVELERS HEALTH ASSOCIATION
FARNAM BUILDING
OMAHA, 2, NEBRASKA

THA

OFFICERS AND DIRECTORS

GRANT C. CAYWOOD	PRESIDENT
ALVIN F. BLOOM	VICE-PRESIDENT
EUGENE C. DINSMORE	SECRETARY
R. ELLWOOD PRATT	TREASURER
WILLIAM E. PRATT	ASST. TREASURER

NUMBER OF CLAIMS PAID SINCE JANUARY, 1904 - - - - 158,992

AMOUNT OF CLAIMS PAID SINCE JANUARY, 1904 - $13,377,489.63

WE HAVE $100,000.00 ON DEPOSIT WITH THE INSURANCE DEPARTMENT OF THE STATE OF NEBRASKA FOR THE PROTECTION OF ALL MEMBERS.

FOR ANY INFORMATION WANTED, ADDRESS
R. E. PRATT, TREASURER
FARNAM BUILDING
OMAHA 2 NEBRASKA

Com 2-A-id

49TH ANNUAL REPORT

THA

FEDERAL TRADE COMMISSION
DECEMBER 31
No. 6252 1952
Travelers Health Assoc
11/2/55 Pratt
V. Gilman

TRAVELERS HEALTH ASSOCIATION
FARNAM BUILDING
OMAHA, 2, NEBRASKA
ORGANIZED 1904

Commission's Exhibit 2A.

78

p.78

TREASURER'S REPORT

RECEIPTS

BALANCE DECEMBER 31, 1951	$1,168,114.68
MEMBERSHIP FEES	6,474.00
PREMIUMS	568,346.00
INTEREST	5,211.37
DIVIDENDS	5,696.82
AMORTIZATION ACCOUNT	88.25
INCREASE OF ADV. PAYMENTS	1,096.61
	$1,755,017.10

DISBURSEMENTS

CLAIMS PAID	371,612.65
INVEST. & SETTLEMENT OF CLAIMS	14,036.56
PAYMENTS RETURNED	5,991.93
PRIZES TO MEMBERS	1,272.72
POSTAGE, EXP., TEL. & TEL.	17,976.46
ADV., PTG. & STAT'Y	13,812.33
SALARIES	73,488.38
OFFICE RENT	9,198.00
OFFICE MAINT. & FURNITURE	9,477.00
TRAVELING & OTHER EXPENSES	2,311.67
AUDITING	1,574.98
LEGAL EXPENSE—GENERAL	1,098.00
TAXES	9,482.53
UNDERWRITING EXPENSE	662.35
BANK CHARGES	666.39
BOND & INSUR. PREMIUMS	3,099.00
EMPLOYEES' RETIREMENT FUND	7,168.66
ALL OTHER ACCOUNTS	4,088.00
CASH & SECURITIES DECEMBER 31, 1952	$1,208,074.81
	$1,755,017.10

FINANCIAL STATEMENT

DECEMBER 31, 1952

ASSETS

LEDGER ASSETS—		
CASH IN BANKS		$ 161,388.81
U.S. GOVERNMENT BONDS		848,084.10
STATE, COUNTY & MUNICIPAL BONDS		78,140.60
MISCELLANEOUS BONDS		16,088.00
RAILROAD BONDS		42,034.61
INVESTMENT TRUST STOCKS		48,288.76
PREFERRED STOCKS		36,168.00
COMMON STOCKS		30,688.00
BILLS RECEIVABLE		206.55
TOTAL		$1,208,074.81
NON-LEDGER ASSETS—		
ACCRETION ON U.S. SAVINGS BONDS	$130,534.96	
ACCRUED INTEREST ON OTHER INVESTMENTS	1,361.41	131,896.37
		$1,339,970.88
LESS—NON-ADMITTED ASSETS—		
DIFFERENCE BETWEEN BOOK AND MARKET VALUE OF SECURITIES		775.76
TOTAL ADMITTED ASSETS		$1,339,195.12

LIABILITIES

CLAIM LIABILITY—		
ESTIMATED AMOUNT OF PENDING CLAIMS		$ 75,771.61
OTHER LIABILITIES—		
SALARY & EXPENSE DUE AND ACCRUED	$ 8,133.38	
ADVANCE PREMIUMS	22,575.55	
WITHHOLDING & SOCIAL SECURITY TAXES	1,042.55	31,743.13
TOTAL LIABILITIES		$ 107,514.73
CONTINGENT FUND—		
FOR PAYMENT OF CLAIMS ONLY		201,687.00
UNASSIGNED FUNDS		1,030,693.39
		$1,339,195.12

POLICIES IN FORCE

SINGLE	11,748
DOUBLE	12,738
TOTAL	24,486

3,035 DISABILITY CLAIMS PAID AVERAGE $122.38

p. 79

MOELLER, McPHERREN & JUDD
CERTIFIED PUBLIC ACCOUNTANTS
Omaha Nebraska Kansas City Missouri
Telephone Wilmington 6200
Omaha, Nebraska

January 6th
1954.

Travelers Health Association,
30/ Farnam Building,
Omaha 2, Nebraska.

Gentlemen:

We have made a detailed cash audit of the financial records of the Travelers Health Association for the year ended December 31, 1953, and we find that the income the the Association from the various sources has been duly accounted for and that all disbursements are correctly stated and sufficiently vouched.

Ownership of all cash, mortgages, and securities was duly verified or confirmed.

We hereby certify that the attached Financial Statements, consisting of Assets & Liabilities and Receipts & Disbursements, set forth the financial position of the Travelers Health Association as of December 31, 1953, and reflect operating results for the year ended that date.

MOELLER, McPHERREN & JUDD
BY
Certified Public Accountant.

TRAVELERS HEALTH ASSOCIATION

FARNAM BUILDING
OMAHA, 2, NEBRASKA

THA

OFFICERS AND DIRECTORS

GRANT C. CAYWOOD	PRESIDENT
ALVIN F. BLOOM	VICE-PRESIDENT
EUGENE C. DINSMORE	SECRETARY
R. ELLWOOD PRATT	TREASURER
WILLIAM E. PRATT	ASST. TREASURER

NUMBER OF CLAIMS PAID SINCE JANUARY, 1904 - - - - 162,094

AMOUNT OF CLAIMS PAID SINCE JANUARY, 1904 - $13,775,523.59

WE HAVE $100,000.00 ON DEPOSIT WITH THE INSURANCE DEPARTMENT OF THE STATE OF NEBRASKA FOR THE PROTECTION OF ALL MEMBERS.

FOR ANY INFORMATION WANTED, ADDRESS
R. E. PRATT, TREASURER
FARNAM BUILDING
OMAHA 2, NEBRASKA

Con 2-B-id

50TH ANNUAL REPORT

50 YEARS

DECEMBER 31
1953

FEDERAL TRADE COMMISSION
6252
Travelers Health Assn
2/55 Pratt
ELECTRO-TYPER, INC., Omaha

TRAVELERS HEALTH ASSOCIATION

FARNAM BUILDING
OMAHA, 2, NEBRASKA
ORGANIZED 1904

Commission's Exhibit 2B.

80

p.80

50TH ANNUAL REPORT — TRAVELERS HEALTH ASSOCIATION — OMAHA 2, NEBRASKA

TREASURER'S REPORT

RECEIPTS

BALANCE DECEMBER 31, 1952	$1,208,074.51
MEMBERSHIP FEES	7,660.00
PREMIUMS	560,297.00
INTEREST	34,287.40
DIVIDENDS	5,199.00
	$1,805,517.91

DISBURSEMENTS

CLAIMS PAID	$ 398,033.96
INVEST. & SETTLEMENT OF CLAIMS	13,253.00
PAYMENTS RETURNED	6,587.87
PRIZES TO MEMBERS	1,438.73
POSTAGE, EXP., TEL. & TEL.	17,082.22
ADV., PTG. & STAT'Y	23,516.01
SALARIES	74,706.46
OFFICE RENT	9,196.00
OFFICE MAINT. & FURNITURE	7,589.95
TRAVELING & OTHER EXPENSES	3,686.74
AUDITING	277.50
TAXES	9,536.52
UNDERWRITING EXPENSE	502.55
BANK CHARGES	842.92
BOND & INSUR. PREMIUMS	2,222.29
EMPLOYEES' RETIREMENT FUND	8,878.50
AMORTIZATION ACCOUNT	7.21
DECREASE OF ADV. PAYMENTS	1,272.97
ALL OTHER ACCOUNTS	3,986.84
CASH & SECURITIES DECEMBER 31, 1953	1,222,923.59
	$1,805,517.91

FINANCIAL STATEMENT

DECEMBER 31, 1953

ASSETS

LEDGER ASSETS—		
CASH IN BANKS		$ 129,646.23
U.S. GOVERNMENT BONDS		798,491.38
STATE, COUNTY & MUNICIPAL BONDS		118,947.72
UTILITY BONDS		15,213.00
INDUSTRIAL BONDS		10,000.00
RAILROAD BONDS		42,968.21
MISCELLANEOUS BONDS		10,000.00
INVESTMENT TRUST STOCKS		48,708.12
PREFERRED STOCKS		46,100.00
COMMON STOCKS		10,000.00
BILLS RECEIVABLE		294.93
TOTAL		$1,222,923.59
NON-LEDGER ASSETS—		
ACCRETION ON U.S. SAVINGS BONDS	$143,041.46	
ACCRUED INTEREST ON OTHER INVESTMENTS	3,236.93	146,278.39
		$1,368,201.98
LESS—NON-ADMITTED ASSETS—		
DIFFERENCE BETWEEN BOOK AND MARKET VALUE OF SECURITIES		840.28
TOTAL ADMITTED ASSETS		$1,367,361.70

LIABILITIES

CLAIM LIABILITY—		
ESTIMATED AMOUNT OF PENDING CLAIMS		$ 75,988.35
OTHER LIABILITIES—		
SALARY & EXPENSE DUE AND ACCRUED	$ 5,557.64	
ADVANCE PREMIUMS	21,136.95	
WITHHOLDING & SOCIAL SECURITY TAXES	1,317.88	27,992.47
TOTAL LIABILITIES		$ 103,884.82
CONTINGENT FUND—		
FOR PAYMENT OF CLAIMS ONLY		201,057.00
UNASSIGNED FUNDS		1,062,499.88
TOTAL		$1,367,361.70

POLICIES IN FORCE

SINGLE	11,212
DOUBLE	12,900
TOTAL	24,112

3,102 DISABILITY CLAIMS PAID AVERAGE $128.31

p. 81

Com 4 of

OUR PLAN EXPLAINED

THA

ORGANIZED

1904

TRAVELERS

HEALTH ASSOCIATION

300 FARNAM BUILDING

OMAHA 2, NEBRASKA

BENEFITS and COST

CLASS	WOMEN S	WOMEN D	WOMEN A	WOMEN B	MEN S	MEN D	MEN A	MEN B
BENEFITS PER WEEK MAXIMUM	$15.00	30.00	45.00	60.00	$25.00	50.00	75.00	100.00
NUMBER WEEKS MAXIMUM	52	52	52	52	104	104	104	104
NON-CONFINING WEEKLY BENEFITS	$ 7.50	15.00	22.50	30.00	$10.00	20.00	30.00	40.00
NUMBER WEEKS NON-CONFINING MAXIMUM	10	10	10	10	10	10	10	10
ANNUAL COST ESTIMATED	$12.00	24.00	36.00	48.00	$16.00	32.00	48.00	64.00
MEMBERSHIP FEE	$ 2.00	4.00	6.00	8.00	$ 2.00	4.00	6.00	8.00

Choose the Right Amount!

The total benefits from all of your health insurance should nearly equal but never exceed your earnings. Apply for the Class best suited for you.

How to Join

Complete application and forward with membership fee to R. E. PRATT, Treasurer

TRAVELERS
HEALTH ASSOCIATION
300 FARNAM BUILDING
OMAHA 2, NEBRASKA

FEDERAL TRADE COMMISSION

DOCKET NO. 6252 ET AL.

IN THE MATTER OF Travelers Health Assn.

11/2/55 WITNESS Pratt

Official Reporter

BY V. Eilert

Commission's Exhibit 4.

Purpose

The Travelers Health Association pays benefits for loss of time on account of sickness.

Diseases Covered

Benefits are paid for loss of time occurring more than thirty days after policy date on account of practically all diseases, except genital. We pay for one day or more of total disability, whether confined within doors or not. Benefits due to tuberculosis, neuritis, arthritis, rheumatism, nervous or mental trouble limited to half for up to ten weeks.

See policy for complete provisions.

Who Is Eligible

Any white person over eighteen years of age, of good moral character and in good general health whose occupation at the time of application is classified as a select or preferred risk and who in the opinion of the Board of Directors is a desirable risk is eligible to membership in this Association, provided that if such applicant is a man he may not be over fifty-five years of age and if a woman, not over fifty years of age.

There is no age limit to which a member may continue protection.

Dependability

Successful operation for nearly half a century during which time some twelve million dollars has been paid on over 150,000 claims is proof that dependable health insurance is obtainable through the Travelers Health Association at extremely low cost. Careful supervision by experienced officers; regular examination by the Insurance Department of the State of Nebraska, under whose laws this Association operates; a million dollars in cash, government bonds and other approved securities and nearly 30,000 satisfied members offer additional proof.

We have $100,000.00 on deposit with the Insurance Department of the State of Nebraska for the protection of all members.

Cost

This is an assessment association and no definite cost is guaranteed, but experience leads us to believe that the estimate shown on last page will be subject to very little variation. The membership fee always covers at least three months' membership.

Commission's Exhibit 5.

Typical Coupon

I deposit herewith the amount required as shown by my application, for which please send me Health Insurance Policy in the Travelers Health Association

WITH ALL COSTS COVERED TO FEBRUARY 1, 1956

It is not necessary to show the name of any one as recommending you as you have already been recommended to us.

Please Attach This To Your Application.

SEE OTHER SIDE

(reverse side)

Baldwyn, Miss.
May 4, 1955

Travelers Health Assn.
Omaha, Nebr.

Dear Mr. Pratt:

I want to thank you for your prompt service when I was sick. It isn't nice to be sick, but it is nice to know that you have something coming in to help take care of the bills when you are.

My check from you seemed like a gift, for the week and half I was off the job.

Thank you again. THA is cheap to own and pays so good when one needs it most.

Yours truly,
Stanley Bryson

FEDERAL TRADE COMMISSION

Docket No. 6252 F.T.C. Ex. 5

11/2/55 Travelers Health Assn.
Pratt

Official Reporter

By V. Eikert

95 **Commission's Exhibit 6.**

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

May
15th
1953

A friend of yours.....

asked me to tell you how you can be sure of having extra money to pay the extra expense of sickness. Here's how it works:

You decide how much you need—$25, $50, $75, or $100 a week. Then complete your application on the blank enclosed and send it to us with $2 for each $25 you want in benefits. This covers your entire cost to November 2, 1953.

When sickness prevents you from working, we pay. Benefits start with the first day and continue for two years. You don't have to be hospitalized to collect. Your and your own Doctor furnish the information.

The "THA" has operated successfully since 1904. We have paid over Thirteen Million Dollars in benefits. Assets of more than a Million Dollars assure prompt payment of just claims.

Business and professional men, in good health and under 55 years of age, may join. No medical examination is required. Just answer the questions in your application enclosed and send it to us with the money needed to cover the benefits you choose. This pays in full to November 2, 1953.

This may well be the most important thing you do today. Tomorrow might be too late. Accept your friend's suggestion. Complete and mail your application now. We'll do our part if you should be sick.

Sincerely,

R. E. PRATT,
Treasurer

REP M

96 Health Insurance for Business and Professional Men and Women

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Commission's Exhibit 8.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

March
18th
1953

Here is a way to be sure of having extra money to pay the extra expense of sickness. It works like this:

You decide how much you need—$25, $50, $75, or $100 a week. Then complete your application on the blank enclosed and send it to us with $2 for each $25 you want in benefits. This covers your entire cost to August 3, 1953.

When sickness prevents you from working, we pay. Benefits start with the first day and continue for two years. You don't have to be hospitalized to collect. You and your own doctor furnish the information.

The "THA" has operated successfully since 1904. We have paid over Thirteen Million Dollars in benefits. Assets of more than a Million Dollars assure prompt payment of just claims.

Business and professional men, in good health and under 55 years of age, may join. No medical examination is required. Just answer the questions in your application enclosed and send it to us with the money needed to cover the benefits you choose. This pays in full to August 3, 1953.

Sickness and accidents are the important things that prevent earnings. There are three times as many chances of disability from sickness as from accident. Complete your protection by sending your "THA" application now.

Sincerely,

R. E. PRATT,
Treasurer

REP M

97 Health Insurance for Business and Professional Men and Women

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Commission's Exhibit 10.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

August
14th
1953

If you had been sitting at my desk during the past year you would realize how vitally important good health insurance is, particularly during trying times. You would thrill, as I did, at the many sincere letters of appreciation from members telling how their claim checks "save the day" in paying the extra expenses of sickness.

You once belonged to this Association, but allowed your membership to lapse. I urge you now to join again. This liberal offer makes it possible for you to do so: Complete and return your new application with $2.00 and, when accepted, we will send you a policy fully paid to February 1, 1954.

The enclosed leaflet, "Our Plan Explained," gives the schedule of benefits and cost. You are already familiar with our plan. Our Association was never in a stronger position, as shown by our 49th Annual Report also enclosed. Faithful performance has proved the soundness of "THA" protection. Coming in again now would demonstrate your foresight and good judgment.

Your application, requiring no envelope nor postage, and a Coupon quoting a letter from a member are enclosed. Send us your application and check today. If you want larger benefits, send proportionately more, as explained on the back of the application. Now is the best time to apply.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Commission's Exhibit 12.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
11th
1953

No frills, just good, hard cash to pay your sickness bills. That's the "THA" way. At home, in the hospital, in a hotel—no matter where you are—when sickness prevents you from working and you have physician's care, we pay.

You don't have to be sick ten days or more, we pay for the first day up to two years. You don't have to choose your disease, we cover all diseases, except genital. See the application blank for details.

You may have benefits to suit your income, $25.00, 150.00, $75.00, or $100.00 a week. Just so you don't overinsure. The cost is low, so you can easily afford this vital protection, about $16.00 a year for each $25.00 unit, payable quarterly.

Successful operation since 1904, nearly fifty years, over Thirteen Million Dollars paid in benefits and present resources of more than a Million Dollars assure prompt payment of claims. See Mr. Mark H. Fisher's letter and 49th Annual Report enclosed.

Here is a liberal offer that you would do well to accept: Two dollars for each $25.00 unit covers the entire cost of "THA" protection to August 3, 1953. Complete and return your application today. It requires no envelope nor postage. You might be sick tomorrow and then it would be too late.

Sincerely,

R. E. PRATT,
Treasurer

REP M

99 Health Insurance for Business and Professional Men and Women

---

Commission's Exhibit 14.

Travelers Health Association
Farnam Building — 16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
18th
1953

Here is really worth-while health insurance. You don't have to go to a hospital, be operated on, take an anesthetic or be X-rayed. When you are sick and can't work and are under the care of a physician—we pay you. Benefits are paid for one day up to one hundred four weeks. All diseases, except genital, are covered. See application for details.

You can have protection paying up to $25.00, $50.00, $75.00 or $100.00 a week, whichever suits your needs and income best. The cost is low, approximately $16.00 a year for each $25.00 unit, payable quarterly.

Practically all "white collar" workers—business or professional men—are eligible, if in good health and between eighteen and fifty-five years of age. There is no age limit to continue membership and no increase in premiums to those of advanced age.

The "THA" has operated successfully since 1904—nearly half a century. We have paid over Thirteen Million Dollars in benefits and have resources of more than a Million Dollars to insure prompt payment of claims. See 49th Annual Report.

You are invited to apply for this vital, inexpensive protection of your most valuable asset—your earning power. No medical examination necessary. Just complete and return the application, using blank enclosed, with $2.00
100 for each $25.00 unit. This is all you pay until August 3, 1953. The sooner you join, the more you get for your money.

Now is the best time to act. You might be sick tomorrow and then it would be too late. Be protected during the

heavy sickness period just ahead. Mail your application and check today.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 16.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
3rd
1954

You have really overlooked a valuable opportunity of being sure of having extra money to pay the extra expense of sickness. My previous letters were intended to explain "THA" benefits but, as you have not joined, there may be some information that you lack. Your questions will be answered promptly.

Briefly, we pay for time lost through sickness. All diseases, except genital, are covered. You choose the amount you need—$25, $50, $75, or $100 a week. We pay for one day up to one hundred four weeks of total disability. Hospitalization or surgery is not required. Just total disability.

This is our Golden Anniversary Year! Successful operation since 1904; over Thirteen Million Dollars paid in benefits; and resources of over a Million Dollars establish our responsibility. See our 50th Annual Report enclosed.

101

Business and professional men, in good health and under fifty-five years of age, may join. No medical examination is required. Just complete your application, using the blank enclosed, which requires no envelope nor postage, and send it to us with $2 for each $25 you want in weekly benefits. This covers your entire cost to August 2, 1954.

Good health is required. Better join while you can. Right now would be the best time to apply.

Sincerely,

R. E. PRATT,
Treasurer

50th Anniversary
1904 to 1954
REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 18.

Travelers Heath Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

May
6th
1953

A mutual friend . . . . . suggested that I explain "THA" benefits to you and invite you to join. My previous letters were intended to do this but, as you have not joined, there may be some information that you lack. Your questions will be answered promptly.

Briefly, we pay for time lost through sickness. All diseases, except genital, are covered. You choose the
102 amount you need—$25, $50, $75, or $100 a week.

We pay for one day up to one hundred four weeks of total disability. Hospitalization or surgery are not required. Just total disability.

Successful operation since 1904, nearly a half century; over Thirteen Million Dollars paid in benefits; and resources of over a Million Dollars establish our responsibility.

Business and professional men, in good health and under fifty-five years of age, may join. No medical examination is required. Just complete your application, using the blank enclosed, which requires no envelope nor postage, and send

it to us with $2 for each $25 you want in weekly benefits. This covers your entire cost to November 2, 1953.

Good health is required. Better join while you can. Right now would be the best time to apply.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 20.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
11th
1953

You have really overlooked a valuable opportunity of being sure of having extra money to pay the extra expense of sickness. Here's how it works:

103 You decide how much you need—$25, $50, $75, or $100 a week. Then complete your application on the blank enclosed and send it to us with $2 for each $25 you want in benefits. This covers your entire cost to August 3, 1953.

When sickness prevents you from working, we pay. Benefits start with the first day and continue for two years. You don't have to be hospitalized to collect. You and your own Doctor furnish the information.

The "THA" has operated successfully since 1904. We have paid over Thirteen Million Dollars in benefits. Assets of more than a Million Dollars assure prompt payment of just claims. See 49th Annual Report, enclosed.

Business and professional men, in good health and under 55 years of age, may join. No medical examination is required. Just answer the questions in your application en-

closed and send it to us with the money needed to cover the benefits you choose. This pays in full to August 3, 1953.

This may well be the most important thing you do today. Tomorrow might be too late. Complete and mail your application now. It requires no envelope nor postage. We'll do our part if you should be sick.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 22.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
11th
1953

104 Better be safe than sorry. Sickness is unavoidable. So is the expense that always comes with it. You can't be sure that you won't be sick, but you can provide for the extra expense.

The "THA" has proved that dependable health insurance can be had at low cost. We have given satisfactory protection for forty-nine years. Every just claim has been paid promptly. Practically all diseases, except genital are covered. Benefits are paid from the first day up to one hundred four weeks. Our finances are sound. See 49th Annual Report, enclosed.

You can have protection paying up to $25.00, $50.00, $75.00, or $100.00 a week, whichever suits your needs and income best. The cost is low, approximately $16.00 a year for each $25.00 unit, payable quarterly.

You are invited to apply for this vital, inexpensive protection of your most valuable asset—your earning power. No medical examination is required. Just complete and

return your application, using the blank enclosed, with $2.00 for each $25.00 unit. This is all you pay until August 3, 1953. The sooner you join, the more you get for your money.

Now is the best time to act. You might be sick tomorrow and then it would be too late. Be protected during the heavy sickness period just ahead. Mail your application and check today.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

105

Commission's Exhibit 24.

Travelers Health Association
Farnam Building — 16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
11th
1953

When you sit in the quite of your home after a strenuous day and your thoughts reflect on the uncertainties of life, don't you sometimes wonder just how much a long spell of sickness would upset your financial plans? Wouldn't it be comforting to know that when your turn at sickness comes, you will have an extra fund to pay the additional expense that always comes with it?

An extra fund for sickness is now available to you at a price that you can easily afford. The Travelers Health Association has, since 1904, provided such protection. Membership is open to business and professional women and our coverage is well suited to your needs. You are cordially invited to join.

This is a liberal policy paying for practically all diseases. Benefits are paid for one day or more. There is no "red tape" in joining nor afterward. No medical examin-

ation required. Our resources are well over a million dollars. See 49th Annual Report, enclosed.

It is easy to join. Just complete and return your application enclosed. It requires no envelope nor postage. $2.00 for a Single Benefit Policy or proportionately more for larger benefits, as shown on the application blank, pays in full to August 3, 1953.

Better send your application now. Sickness comes unexpectedly, and of course, you must be in good health when you join.

Sincerely,

R. E. PRATT,
Treasurer

REP M

106 Health Insurance for Business and Professional Men and Women

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Commission's Exhibit 26.

Travelers Health Association
Farnam Building — 16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
11th
1953

Did This Ever Happen To You?

Did you ever try to sell a customer who wouldn't say a word but let you tell him all the good points of your line and then, for some trivial reason, would leave you? After fooling around a while he would come back and let you tell it all over again, with whatever new argument you had thought of while waiting, and still not say a word.

I have had this happen on the road and my experience with you reminds me of it. Five times I have written you on the subject of health insurance, but you have never given me an opening. You let me do all the talking without saying a word in reply. Now, won't you talk back?

You need what I have to offer, no question about that. You will get sound health insurance from an old, reliable

company at far below average cost. What better arguments can be advanced? Read the letter from Mr. Mark H. Fisher, one the back of the Coupon and the information in our 49th Annual Report, enclosed.

The membership fee of $2.00 for the Single Benefit Policy or proportionately more for larger benefits, as shown on the application blank, covers all cost to August 3, 1953. Nearly six months' membership if you send in your application now. Let's get together.

107 You can not buy health insurance after sickness hits you. Now is the time to join. Mail your application today, using the blank herewith. No envelope nor postage necessary.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 28.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
11th
1953

Will You Be One Of These?

Sixty-eight people in the United States are disabled by sickness or accident every minute—fifty-one by sickness and seventeen by accident. This proves the urgent need for health insurance.

Protect your earnings. Sickness and accident are the only things that can prevent you from working, if you have a job. There are three chances of your being disabled by sickness to one by accident. Health insurance is a vital necessity.

The "THA" provides sound protection in case of sickness. Benefits commence with the first day of disability and continue for fifty-two weeks. Successful operation since 1904 and resources of over a million dollars assure you of our responsibility. See 49th Annual Report, enclosed.

Now is an excellent time to join. Two dollars for the Single Benefit Policy or proportionately more for larger benefits, as shown on the application, will cover the entire cost to August 3, 1953. The sooner you join, the more protection you get for your money.

Our Coupon enclosed quotes a voluntary letter from a member approving our claim methods. You will enjoy "THA" membership.

Good health is required. Better join while you can. Complete and return your application now, using the blank herewith, which requires no envelope nor postage.

Earnestly,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 30.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications to
R. E. Pratt, Treasurer

February
11th
1953

If you could handle our sickness claims, you would appreciate the value of health insurance. If you could see how promptly and satisfactorily we pay, you would buy your health insurance from us.

You can have protection paying up to $25.00, $50.00, $75.00 or $100.00 a week, whichever suits your needs and income best. The cost is low, approximately $16.00 a year for each $25.00 unit, payable quarterly.

We want you as a "THA" member. This special offer gives you nearly six months' membership if you
109 join now: Just complete and return your application, with $2.00 for each $25.00 unit. This is all you pay until August 3, 1953. The sooner you join, the more you get for your money.

Here is health insurance that is really worth-while. You don't have to go to a hospital, be operated on, take an anesthetic or be X-rayed. When you are sick and can't work and are under the care of a physician—we pay you. Benefits are paid for one day up to one hundred four weeks. All diseases, except genital, are covered. See application for details.

Sickness and accident are the only things that can prevent you from working if you have a job. There are more than three chances of being disabled by sickness to one by accident. Complete your protection by "THA" membership. This liberal offer makes it easy to join.

Your application blank, a coupon quoting a voluntary "thank you" letter from a member, and our 49th Annual Report are enclosed. You must be in good health to join. Now is the best time to apply. Mail your application today. No envelope nor postage needed.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 32.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
11th
1953

No frills, just good hard cash to pay your sickness bills. Secured through your own foresight, in a company

110 of your own choice and paid for with your own money. That's the American Way that can assure you of freedom from financial worries when sick.

The urgent need for dependable health insurance at reasonable cost inspired the founding of the Travelers Health Association forty-nine years ago. Since then we have paid nearly 159,000 claims, amounting to over Thirteen Million Dollars. Every just claim has been paid promptly, in full. Resources of over a Million Dollars today guarantee the continuance of this valuable protection. See 49th Annual Report.

You are cordially invited to apply for membership in this Association so that you, too, may once again enjoy its protection.

Paid up insurance to August 3, 1953, for $2.00 for the Single Benefit Policy, or proportionately more for larger benefits as shown on the application blank. This liberal offer, just released, makes this the time to join. Just complete and return your application and check today. No envelope nor postage needed. Good health is a requirement. Wisdom suggest that you apply now, while you can.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 34.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

May 6th 1953

Here is protection that should interest you. Liberal benefits for time lost through sickness. Pay for one day
111 up to one hundred four weeks. All diseases covered,

except those of genital organs. Prompt payment based on statements from you and your own doctor.

These are the high lights of "THA" protection. Since 1904—over 49 years—this Association has furnished health insurance at low cost to its members. Over thirteen million dollars in benefits have been paid to 158,992 claimants. Present resources of well over a million dollars guarantee prompt payments and low cost in the future.

Join now and receive protection—fully paid to November 2, 1953, for only $2.00. If you prefer larger benefits, send the amount shown on the last page of the application blank.

No medical examination is required. No "red tape" to get in and none afterward. Simply complete your application on the blank enclosed and send it to us with $2.00 or more, as above. Right now would be a fine time to do it. Sickness might come unexpectedly and then it would be too late.

Apply for "THA" membership today. It is the finest investment you can make.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Man and Women

Commission's Exhibit 36.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

August
5th
1953

Two dollars will now buy "THA" protection to February 1, 1954, providing maximum benefits of $25.00
112 a week for up to two years' time loss on account of sickness. After that the cost will be about 16.00 a year. Larger benefits may be had at proportionate cost.

"THA" health insurance pays for one day or more, covers all diseases except genital and the cost is extremely low. You stand three chances of being disabled by sickness to one by accident. Health insurance is the most important form of personal protection.

You once enjoyed "THA" membership. We cordially invite you to share in our benefits when you are sick. See our 49th Annual Report and Mr. R. B. Stone's letter on the Coupon, both enclosed.

No medical examination is required. Just complete and return your application with $2.00 for Single Benefits or proportionately more for larger benefits, as shown on the back of the application blank. This pays you in full to February 1, 1954. Nearly six months' membership if you act promptly.

You can not buy health insurance after sickness hits you. Now is the best time to apply.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 38.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

August 5th 1953

You are well aware of the dangers of sickness and the extra expense that it always brings. Here is a safe, inexpensive way to provide extra money to cover those extra expenses.

113

The "THA", organized in 1904 and insuring business and professional men, offers liberal benefits for time lost from work because of sickness. It pays for one day or more

up to one hundred four weeks. Practically all diseases, except genital, are covered.

You can have protection paying up to $25.00, $50.00, $75.00 or $100.00 a week, whichever suits your needs and income best. The cost is low, approximately $16.00 a year for each $25.00 unit, payable quarterly. Our finances are sound, as shown by our 49th Annual Report enclosed.

You once belonged to our Association and we will be glad to have you as a member again. You can join now for $2.00 for each $25.00 unit. This is all you pay until February 1, 1954.

Just complete and return your application enclosed with your membership fee, as above. It requires no envelope nor postage. Right now is the best time to do it. Sickness might come without warning. You are cordially invited to apply.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 40.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

November 4th 1953

114 Comfort, says the dictionary, is strengthening aid; a feeling of having relief; freedom from want or from anxiety.

Membership in the Travelers Health Association insures your comfort in case of sickness. It enables you to know and to enjoy the satisfaction that comes from the assurance of an extra income to care for the extra expense that always accompanies sickness.

Most necessary things can be bought after the need for them arises. Not so with health insurance. This important protection must be arranged before you need to use it.

Foresighted people throughout the United States and Canada, some 25,000 of them now, have for fifty years insured this comfort for themselves and their dependents at a cost so low as to be hardly noticeable.

You may enjoy the comfort of this protection once more. Let us share it with you. The enclosed application explains the benefits and cost and requires no envelope nor postage. Simply complete and return it now with $2.00 for Single Benefit Policy fully paid to May 3, 1954, or proportionately more for larger benefits, as shown on the application.

Sincerely,

R. E. PRATT,
Treasurer

REP M .

Commission's Exhibit 42.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

November
4th
1953

Here is the greatest value, the most for your money, that you can possibly buy:

115 Health Insurance, Fully Paid To May 3, 1954, For $2.00

You once enjoyed membership with us, so you are, no doubt, familiar with our policy. You will remember that:

benefits start with the first day of sickness;
all diseases, except genital, are covered;
benefits continue for 52 weeks maximum;
claims are paid same day final proofs are approved;
over $13,300,000.00 paid in claims;
the "THA" is a strong, time-tested company;
no "red tape" is found in our plan.

It is easy to join. Your application blank is enclosed and requires no envelopes nor postage. Just complete and return it with $2.00 for the Single Benefit Policy or proportionately more for larger benefits, as shown on the application blank. When accepted, you will receive a policy paid in full to May 3, 1954.

Better apply today. Tomorrow might be too late.

Sincerely,

R. E. PRATT,
Treasurer

REP M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 44.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

February
3rd
1954

Here's how you can be sure of having extra money to pay the extra expense of sickness.

116 You decide how much you need—$25, $50, $75, or $100 a week. Then complete your application on the blank enclosed and send it to us with $2 for each $25 you want in weekly benefits. This covers your entire cost to August 2, 1954.

When sickness prevents you from working, we pay. Benefits start with the first day and continue for one hundred four weeks. You don't have to be hospitalized to collect. You and your own doctor furnish the information.

This is our Golden Anniversary Year! The "THA" has operated successfully since 1904. We have paid nearly Fourteen Million Dollars in benefits. Assets of more than a Million Dollars assure prompt payment of claims. See our 50th Annual Report enclosed.

Business and professional men, in good health and under 55 years of age, may join. No medical examination is required. Just answer the questions in your application enclosed and send it to us with the money needed to cover the benefits you choose. This pays in full to August 2, 1954.

This may well be the most important thing you do today. Tomorrow might be too late. Complete and mail your application now. We'll do our part if you should be sick.

Sincerely,

R. E. PRATT,
Treasurer

50th Anniversary
1904 To 1954

Rep M

Health Insurance for Business and Professional Men and Women

Commission's Exhibit 46.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

May 5th 1954

117 If you could spend a few days in our Claim Department during an epidemic, you would realize the value of good health insurance.

Sickness is liable to disable you or any one, at any time. When it does, extra expense will come with it. You can probably pay that extra expense out of your regular funds, but an extra fund with which to meet it is always very welcome. The "THA" offers you the opportunity of easily arranging for the payment of the expense of sickness without disturbing your normal budget. The cost is so low that you will hardly notice it.

We pay for one day or more, up to one hundred four weeks, of disability. Practically all diseases, except genital, are covered. There is no "red tape" involved—just statements from you and your own doctor. This is our Golden Anniversary Year! Successful operation since 1904

and over one million dollars in assets guarantee prompt payment of claims.

Now is an excellent time to join. Two dollars pays in full for new memberships to November 1, 1954, or proportionately more for larger benefits, as shown on the application. Just complete and return your application on the blank enclosed, which requires no envelope nor postage. We will do the rest.

Right now, while you are thinking about it, would be the best time to apply.

Sincerely,

R. E. PRATT,
Treasurer

50th Anniversary
1904 To 1954

Rep M

Health Insurance for Business and Professional Men and Women

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118 **Commission's Exhibit 48.**

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

May
5th
1954

I have explained to you how membership in the Travelers Health Association would guarantee you a definite income in case you should be taken sick.

It would be a pleasure to tell you our story in person. You would enjoy reading the "thank you" letters from members who have had claims. The letter on the back of the Coupon enclosed came unsolicited and is typical of hundreds in our files.

This is our Golden Anniversary Year! Successful operation since 1904 and nearly Fourteen Million Dollars paid to members in claims demonstrate the value of "THA" protection. Our schedule of benefits and information about

our policy appear in the enclosed leaflet, "Our Plan Explained." You will find it interesting.

I am very glad to invite you to share again in our protection. Since I can not extend this invitation to you in person, I will make it easy for you to join by offering you paid up insurance to November 1, 1954, for $2.00 for a Single Benefit Policy or proportionately more for larger benefits, as shown by the leaflet.

Just fill out the application, which needs no envelope nor postage, and return it to me with the Coupon and your remittance, as above. Better send it today. Sickness comes unexpectedly. Tomorrow might be too late.

Sincerely,

R. E. PRATT,
Treasurer

50th Anniversary
1904 To 1954

Rep M

119 Health Insurance for Business and Professional Men and Women

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Commission's Exhibit 50.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications To
R. E. Pratt, Treasurer

August
4th
1954

My previous letters evidently have not made clear to you the benefits of "THA" protection. We want you to understand this valuable policy fully, so I am sending you this further explanation and cordial invitation to join.

"THA" health insurance is real protection. There are no "jokers" in our policy. It pays for loss of time starting with the first day and continuing for one hundred four weeks if you are disabled that long. All diseases, except genital, are covered.

This is our Golden Anniversary Year! Since 1904 "THA" protection has been enjoyed by people throughout the entire United States and Canada. We have paid

nearly Fourteen Million Dollars in benefits. Assets of more than a Million Dollars assure prompt payment of claims. See our 50th Annual Report, enclosed.

We want you to share in "THA" benefits again. Now is an excellent time to join. Two dollars for the Single Benefit Policy or proportionately more for larger benefits, as shown on the application, will cover the entire cost for you to February 1, 1955. The sooner you join, the more protection you get for your money.

Health insurance is one thing that you can't buy after you need to use it. You must get it while your health
120 is good. Send your application today. No envelope nor stamp required. Thank you.

Sincerely yours,

R. E. PRATT,
Treasurer

50th Anniversary
1904 To 1954

Rep M

Health Insurance for Business and Professional Men and Women

This Policy is Cancellable by the Association and Provides Indemnity for Loss of Time due Solely to Sickness to the Extent herein Provided.

CLASS "S"

TRAVELERS HEALTH ASSOCIATION

OMAHA, NEBRASKA

AN ASSESSMENT ASSOCIATION

(Hereinafter called the Association)

does hereby certify that

is a member of the Travelers Health Association and is entitled to the benefits provided in this policy, subject to the exceptions, conditions and limitations set out therein and in the application, a copy of which is attached hereto. This policy and application constitute the entire contract of insurance. The payment of the membership fee of Two Dollars covers the cost of this policy until , 19 , after which date the continuation of this policy shall depend upon the payment by the Insured and acceptance by the Association of assessments called by the Board of Directors of the Association that become due on or after that date.

This policy shall be immediately suspended unless the remittance or payment by the Insured to cover each assessment is deposited in the U. S. Mail or made to an authorized agent of the Association on or before the date it is due.

In Witness Whereof, The Travelers Health Association has caused this policy to be signed by its President and Treasurer and its corporate seal to be impressed hereon, at Omaha, Nebraska, this day of , 19 .

G. C. Haywood

PRESIDENT

CS H-49

/ Commission's Exhibits 52A, 52B, 52C and 52D.

Subject to the exceptions, conditions and limitations hereinafter set out, the Insured shall be entitled to indemnity for such time as he is totally disabled solely by sickness from attending to business, and is under the care of a licensed physician other than himself; PROVIDED such sickness begins more than thirty days after the date of this policy or more than ten days after the date of its reinstatement.

SICKNESS DISABILITY BENEFITS

For such disability, solely from sickness, beginning within one year after the date of this policy and causing the Insured to be continuously confined within doors:

First week's confinement.....$10.00
Each week thereafter not exceeding 103 weeks..... 25.00

For such disability, solely from sickness, beginning more than one year after the date of this policy and causing the Insured to be continuously confined within doors:

Each week not exceeding 104 weeks.....$25.00

For such disability, solely from sickness, which does not confine the Insured continuously within doors:

Each week not exceeding 10 weeks.....$10.00

EXCEPTIONS AND LIMITATIONS

In no case shall the Association pay benefits in the aggregate to exceed 104 weeks with respect to one sickness, including both confining and non-confining total disability.

The word "physician" as used herein, means one licensed to prescribe drugs and practice internal medicine.

No disability benefits shall be paid for time when the Insured is able to attend to business in any way, nor for disability due to sickness for any period of time during which the member is disabled on account of accidental injuries.

No benefits shall be paid when disability is due to any of the following diseases or causes: Hernia, prostatitis, disease in the genital organs; nor for any disability caused intentionally or by violent, external or accidental means.

The Association shall not be liable for any loss sustained or contracted in consequence of the Insured being intoxi-

cated or under the influence of narcotics unless administered on the advice of a physician.

No benefits for disability due to tuberculosis, neuritis, arthritis or any form of rheumatism, paralysis, nervous trouble, or mental trouble, shall be paid in an amount to exceed $12.50 per week, nor for more than 10 weeks.

STANDARD PROVISIONS

1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the Insured or by reason of his doing any act or thing pertaining to any other occupation.

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Association and such approval be endorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Association or by any of its duly authorized agents shall reinstate the policy, but only to cover such sickness as may begin more than ten days after the date of such acceptance.

4. Written notice of sickness on which claim may be based must be given to the Association within ten days after the commencement of the disability from such sickness.

5. Such notice given by or in behalf of the Insured or beneficiary, as the case may be, to the Association at Omaha, Nebraska, or to any authorized agent of the Association, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Association. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. The Association upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proof of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the Association at its said office within ninety days after the termination of the period of disability for which the Association is liable.

125 **Commission's Exhibit 52C.**

8. The Association shall have the right and opportunity to examine the person of the Insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. Upon request of the Insured and subject to due proof of loss all accrued indemnity for loss of time on account of disability will be paid at the expiration of each month during the continuance of the period for which the Association is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

10. All the indemnities of this policy are payable to the Insured, if living, otherwise to the designated beneficiary.

11. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

12. The Association may cancel this policy at any time by written notice delivered to the Insured or mailed to his last address, as shown by the records of the Association, together

with cash or the Association's check for the unearned portion of the premiums actually paid by the Insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

13. If the Insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the Association, then in that case the Association shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

ADDITIONAL PROVISIONS

Failure to give affirmative proof of loss within the time provided in Standard Provision 7 shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such proof and that same was given as soon as was reasonably possible and within one year from the time such proof would otherwise be required hereunder.

No provision of the Constitution or By-Laws of the Association not incorporated in full herein shall void the policy or be used as evidence in any legal action.

P 1 S

TRAVELERS HEALTH ASSOCIATION
T·H·A
OMAHA, NEBRASKA

Incorporated January 2, 1904
Under the Insurance Laws
of the State of Nebraska

This Policy is Cancellable by the Association and Provides Indemnity for Loss of Time due Solely to Sickness to the Extent herein Provided.

CLASS "S"

NUMBER

S

THA

TRAVELERS HEALTH ASSOCIATION

OMAHA, NEBRASKA

Issued To

Beneficiary

CS 1-49

CHANGE OF BENEFICIARY

I hereby direct that the beneficiary under the within policy be changed to

whose relationship to me is

Dated at *19*

Witness SIGNATURE OF HOLDER OF THIS POLICY

ONE WITNESS SIGN HERE

The beneficiary under this policy is hereby changed to to comply with the above request.

Omaha, Nebr., *19*

TREASURER

CANCELLATION RECEIPT

Received of the TRAVELERS HEALTH ASSOCIATION

Dollars,

in full of all claims under this policy, which policy is hereby surrendered for cancellation.

Dated at *this* *day of* *19*

Witness

6.25

129 **Commission's Exhibit 59.**

August 30, 1951.

Mr. James W. Millspaugh,
Rule Administration,
Bureau of Industry Cooperation,
Room 311, Federal Trade Commission,
Washington, D. C.

Dear Mr. Millspaugh:

Re: Travelers Health Association

I now enclose to you herewith two copies of the printed leaflet "Our Plan Explained", which I believe you will find to be satisfactory.

This appears to close matters relating to above Association and your courtesy in the handling thereof is appreciated.

I will likely be attending the insurance section of the American Bar Association in New York City about September 16-17. I a mlikely to be in Washington September 18-19, and if you are in town, I hope to be able to spend a few minutes with you.

With kind personal regards, I am

Sincerely yours,

CCF:KR
Encls.

C. C. FRAIZER.

Commission's Exhibit 60.

Federal Trade Commission
Washington 25
July 9, 1951.

Bureau of Industry Cooperation
Division of
Trade Practice Conferences

130 C. C. Fraizer, Esq.
Fraizer & Fraizer,
Attorneys at Law,
435 Lincoln Liberty Life Bldg.,
Lincoln, Nebraska.

Dear Mr. Fraizer:

Thank you for your letter of June 21, 1951, enclosing copies of the revised application form of Travelers Health Association.

When the folder "Our Plan Explained" has been printed in the proposed revised form we should appreciate having specimens of it also for our file.

With kind regards

Sincerely yours,

JAMES W. MILLSPAUGH,
Attorney.
Rule Administration.

Commission's Exhibit 61.

June 21, 1951.

Mr. James W. Millspaugh,
Rule Administration,
Bureau of Industry Cooperation,
Room 311,
Federal Trade Commission,
Washington, D. C.

Dear Mr. Millspaugh:

Re: Travelers Health Association

Enclosed herewith please find two copies of revised application blank.

I trust this meets with your approval and is in compliance with the rules and with our previous correspondence.

131 Kind personal regards, I am

Yours very truly,

CCF:GW
Enc.

C. C. FRAIZER.

Commission's Exhibit 62.

Federal Trade Commission
Washington 25
December 15, 1950.

Bureau of Industry Cooperation
Division of
Trade Practice Conferences

C. C. Fraizer, Esq.,
Fraizer and Fraizer,
425 Lincoln Liberty Life Building,
Lincoln, Nebraska.

Re: Travelers Health Association.

Dear Mr. Fraizer:

Upon my return at the end of October from vacation your letter of October 10, 1950, and the acknowledgment of October 13, 1950, by Mr. E. M. Hall, Jr., came to my attention and I thank you for the information answering my question as to the use of the different policy forms of the above association.

Shortly after my return from vacation it was necessary for me to spend several weeks in the field but I expect to be in the office from now on and will be pleased to receive proofs of advertising material revised along the lines of our discussion in this office as soon as such material is available.

During my trip I called on Mr. Trevett in Utica and had hoped to be able to see Mr. Hubbard but he had
132 not yet returned to his office following his illness this past summer. However, I had a very pleasant visit with Mr. Felt.

Thanking you for your cooperation and with kind regards and best wishes, I am

Sincerely yours,

JAMES W. MILLSPAUGH,
Attorney.
Rule Administration

Commission's Exhibit 63.

December 18, 1950

Mr. James W. Millspaugh,
Rule Administration,
Bureau of Industry Cooperation,
Room 311,
Federal Trade Commission,
Washington, D. C.

Re: Travelers Health Association

Dear Mr. Millspaugh:

I was glad to receive your letter of December 15th and I do hope you will bear with me just a bit longer. I assure you the matter has not been neglected. I have been on the go a great deal, including just returning from the meeting of the National Association of Insurance Commissioners at Los Angeles. Also Mr. Pratt of the above Association has been on the go more than usual. On one occasion when I specifically had planned to spend some time with him, I found him out of the city.

Now, the holidays are approaching and it is difficult to accomplish too much work during the Christmas season. However, I absolutely assure you that within a reasonable time you will hear from me with regard to proofs of advertising material.

I am glad you were able to call on Mr. Trevett at Utica, New York.

133 I had a nice visit with Mr. Hubbard at Los Angeles and apparently he is recovered from his recent illness. Incidentally, Mr. Hubbard in discussion at Los Angeles specifically mentioned the very courteous treatment he had received at the office of the Federal Trade Commission. I am not saying this just to be pleasant, but I thought you should know it. Their company, of course, is a very fine organization.

You will hear from me within a reasonable time and may I wish you a very Merry Christmas.

Sincerely yours,

CCF:GW C. C. FRAIZER.

Commission's Exhibit 64.

January 18th, 1951.

Mr. James W. Millspaugh,
Rule Administration,
Bureau of Industry Cooperation,
Room 311,
Federal Trade Commission,
Washington, D. C.

Re: Travelers Health Association

Dear Mr. Millspaugh:

In accordance with the rules and your various suggestions, the above Association is planning to revise its leaflet, "Our Plan Explained," and the advertising matter on the back of the application form, as shown in the enclosures, one being labeled "Present Form" and one being labeled "New Form." Any other items issued by this association in the future will be in harmony with the wording in the new or revised forms.

In writing me under date of January 16, 1951, Mr. R. E. Pratt, treasurer of the above Association, says:

134 "Because of paper shortages, etc. we have anticipated our needs for standard advertising pieces further than usual and, also because of paper and labor shortages, it would be a violation of economic soundness and avoidance of our patriotic duty to destroy the substantial stock on hand to make these minor changes. As you know, we have used our present advertising appeals for over forty-seven years and have not found any evidence of the public having been misled by them, therefore, it does not seem that their continued use for a few more months can do much harm."

It is hoped that you will be willing to permit the Association to use up its present supplies.

Kind personal regards, I am

Sincerely yours,

C. C. FRAIZER.

CCF:GW
Enc

Commission's Exhibit 65.

Federal Trade Commission
Washington 25

January 29, 1951

Bureau of Industry Cooperation
Division of
Trade Practice Conferences

C. C. Fraizer, Esq.,
Fraizer and Fraizer,
425 Lincoln Liberty Life Building,
Lincoln, Nebraska.

Re: Travelers Health Association.

Dear Mr. Fraizer:

Thank you for your letter of January 18, 1951, with which you enclosed copies of the leaflet "Our Plan Explained" and the application blank of the Association showing the manner in which it is planned to bring the promotional literature into conformity with the provisions of the Mail Order Insurance Rules.

135

The proposed revisions appear to cover the points we discussed during our conference and we would like to have copies of these advertising pieces for our file when they have been printed in final form.

Your cooperation and that of the officers of the Association in effecting the changes in this material deemed necessary under the Rules is greatly appreciated.

With kind regards and best wishes, I am

Sincerely yours,

JAMES W. MILLSPAUGH,
Attorney.
Rule Administration.

Commission's Exhibit 70.

Travelers Health Association
Farnam Building—16th & Farnam Sts.
Omaha, Nebraska

Address Communications to
R. E. Pratt, Treasurer

Schedule A—Number 5

The following is a summary from the records of the Association showing the dollar volume of premium receipts received by it during the following years:

1952	$568,346.00
1953	560,297.00
1954	548,666.00

The above dollar volume of premium receipts includes receipts from members residing in the State of Nebraska because our accounts with members are kept numerically by membership numbers and are not separated geographically.

136 **Commission's Exhibits 75.**

Travelers Health Association's explanation of procedure in assigning claim numbers and accounting for claim numbers assigned in 1953 which did not result in claims paid that year.

Assignment of Claim Numbers.

Whenever a member advises us of a circumstance that might, or that he thinks might, entitle him to benefits, we prepare a claim jacket and assign a claim number to the case. This is done immediately upon receipt of the advice and before checking our records. A check of records frequently shows lapse or suspension for non-payment or late payment of premium (see paragraph 2, page 1, and Standard Provision #3, of policy), or other circumstances producing no liability.

No Liability.

Even when the first advice from the member shows the cause to be one not covered by his policy, such as accidents,

hernia, prostatitis, genital, etc., (see paragraph 4 under "Exceptions and Limitations" page 2 of policy), we still make up a claim jacket and assign a claim number.

No Proof.

If the policy is in force and no such indication of non-liability exists, we immediately send claim forms to the member for completion. If these claim forms are not returned to us or if no further word is received from the member after approximately two weeks have passed, we again communicate with the member asking that either the claim forms be furnished or we be advised that no claim will be made. If no reply to this tracer is received, we leave the claim jacket in the current pending claim file for approximately sixty days longer and then if no word is received, we assume that no claim will be made, mark the claim jacket "No Proof" and remove it from the current, pending claim file.

137 Withdrawn.

Frequently the member will advise us that he will not complete a claim in which instance we mark the claim jacket "Withdrawn" and remove it from the current, pending claim file.

No Refusal or Denial.

Under any of the foregoing circumstances, it is evident that no claim was completed and that there was no denial or refusal of such by us. Yet in each instance a claim number was assigned and the Federal Trade Commission's representative who examined our records apparently counted such cases as claims received.

1953 Claim Numbers Assigned.

During the year 1953 we assigned 3,931 claim numbers, and paid 3,102 claims, leaving 829 claim numbers unaccounted for and which the Federal Trade Commission's attorney at the hearing identified as "Rejected Claims" although the information which he had from the FTC representative who examined our records and which he had with him but did not produce at the hearing included an explanation of the various reasons why these 829 claim numbers did not develop into claims paid during 1953.

Disposition of Claim Numbers Issued in 1953.

Here following is a detailed account showing the disposition, cause and circumstances covering the Claim Numbers in question:

Of the 3,102 claims paid in 1953, 268 were received prior to 1953, which leaves 2,834 claims received and paid in 1953 and leaving 1,097 claim numbers assigned in 1953 which did not develop into claims paid that year. These 1,097 claim numbers were disposed of as follows:

	Claims received in 1953 and paid in 1954 or subsequently	273
	Accident	277
	Hernia	68
	Prostatitis & Genital	97
138	No Proofs	230
	Withdrawn	152
		1,097

Certainly this analysis shows that our advertising has not misled our members and that no misunderstanding has been created in their minds by the advertising which induced them to join. On the contrary, that our members do understand the benefits offered by our advertising and that they are satisfied with the protection they bought and approve our handling of their claims is testified to by hundreds of voluntary letters so stating.

TRAVELERS HEALTH ASSOCIATION
By R. E. Pratt
Treasurer

Respondent's Exhibit 1.

September 6, 1950.

Mr. James W. Millspaugh, Attorney,
Rule Administration,
Bureau of Industry Cooperation,
Division of Trade Practice Conferences,
Federal Trade Commission,
Washington 25, D. C.

Dear Mr. Millspaugh:

As indicated in a previous letter, I will be in Washington later this month attending the Insurance Section of the American Bar Association and I am planning to arrive a bit early in the expectation and hope that you can grant me some time for a conference on Friday, September 15th at about 10 A. M., if possible, or at your convenience during the day.

I will telephone you about 9 A. M. on the 15th.

Thanking you and with kind personal regards, I am

Sincerely yours,

CCF:GW C. C. FRAIZER.

FEDERAL TRADE COMMISSION
WASHINGTON 25

Rec'd X 2A d

BUREAU OF INDUSTRY COOPERATION
DIVISION OF
TRADE PRACTICE CONFERENCES

September 8, 1950.

FEDERAL TRADE COMMISSION
6252 2-A
Travelers Health Assn.
11/2/55
By J Eilert

C. C. Fraizer, Esquire,
Fraizer & Fraizer,
425 Lincoln Liberty Life Building,
Lincoln, Nebraska.

Re: Travelers Health Association.

Dear Mr. Fraizer:

The advertising material and related policies of the above firm, submitted with your letter of August 2, 1950, have been examined carefully and there are several respects in which the advertising is deemed to lack conformity with the provisions of certain of the Mail Order Insurance Rules.

It is noted that two of the policies, namely, Forms CD N-49 and DW N-49, provide that benefits are payable for sickness only in the event such sickness begins more than thirty days after the date of the policy. We find no disclosure of this time lapse or lag in the promotional literature, which appears therefore to be out of harmony with the provisions of Rule 13 of the above rules.

Examination of the policies also discloses that benefits payable for tuberculosis and certain other diseases are limited to smaller amounts for a shorter time than benefits provided generally, and it is considered that Rule 11 requires the disclosure in advertising of such limitation of the coverage afforded by the policies.

The leaflet "Our Plan Explained" and the application forms carry the statement "No medical examination is required" and the propriety of the use of this unqualified representation is questioned under Rule 4 relating specifically to this sort of statement.

Further, the first paragraph of one of the letters to prospective purchasers represents that membership in the Association would "guarantee you a definite income in case you should be taken sick." The implication of this broad representation is undoubtedly inconsistent with the limitations of coverage provided by the policies, and would appear to be contrary to the provisions of Rule 1 prohibiting the use of any advertisement having the capacity or tendency to mislead or deceive prospective purchasers of insurance.

1927

2-B

I have just received your letter of September 6 and will be happy to see you on the 15th, as you suggest, at which time we can go over the points mentioned herein. However, it occurred to me that it might be helpful if you had these items in mind and could be giving them some thought prior to our meeting.

With best wishes and looking forward to seeing you on September 15, I am

Sincerely yours,

James W. Millspaugh

James W. Millspaugh, Attorney,
Rule Administration.

143 **Respondent's Exhibit 3.**

Federal Trade Commission
Washington 25

September 28, 1950.

Bureau of Industry Cooperation
Division of
Trade Practice Conferences

C. C. Fraizer, Esquire,
Fraizer & Fraizer,
425 Lincoln Liberty Life Building,
Lincoln, Nebraska.

Re: Travelers Health Association

Dear Mr. Fraizer:

It was a real pleasure to have had the opportunity to visit again with you during your recent trip to Washington and to discuss in person the questioned items in the Travelers' advertising matter. I trust that you and Mrs. Fraizer had an enjoyable stay here and that the whole trip was a pleasant and productive one. I expect to leave the first of next week for an eagerly anticipated vacation.

It occurred to me that it might save time and expense if the revisions of the Association's advertising material which we agreed upon during our meeting should be submitted in proof form before final printing when the desired changes are worked out.

With appreciation of your generous cooperation and kind personal regards, I am

Sincerely yours,

JAMES W. MILLSPAUGH,
Attorney,
Rule Administration.

Respondent's Exhibit 4A and 4B.

First page of letter is Respondent's Exhibit 4A.

October 10, 1950.

144 Mr. James W. Millspaugh, Attorney,
Rule Administration,
Bureau of Industry Cooperation,
Division of Trade Practice Conferences,
Federal Trade Commission,
Washington 25, D. C.

Re: Travelers Health Association
Omaha, Nebraska.

Dear Mr. Millspaugh:

Upon returning from my trip to Washington followed by a week in New York, I was required to be in Chicago for a few days and I am a little behind in acknowleding your letter of September 28th and not following up generally our conference at Washington.

I greatly appreciated the opportunity to confer with you further and I trust you are now enjoying your vacation.

Proofs of revised advertising material will be sent to you as soon as possible.

At our conference in your office, you asked me to designate which application forms were used for what policy forms, and in response I will say that the company is now issuing seven different policy forms as follows:

Policy Form No.	Type or Description of Policy
CS-N-49	Men's Single Benefit Policy
CD-N-49	Men's Double Benefit Policy
CW-N-49	Women's Single Benefit Policy
DW-N-49	Women's Double Benefit Policy
CD-O1-49	Men's Double Benefit Policy issued during first year of membership
CD-O-49	Men's Double Benefit Policy issued after first year of membership
CW-O-49	Women's Double Benefit Policy issued to members.

The long form of application, marked Exhibit "A", is used for applying for any of the first four policy forms listed

145 Second page of letter is Respondent's Exhibit 4B.

above; the short form, marked Exhibit "B", for any of the last three policy forms above listed; copies of the two application forms, Exhibits "A" and "B", are herewith enclosed.

I trust this answers your inquiry on this point.

You will hear from me a little later regarding the other matters covered in previous correspondence, as well as in our conference.

Thanking you and with kind personal regards, I am

Sincerely yours,

CCF:GW
Encs.

C. C. FRAIZER.

Respondent's Exhibit 5.

Federal Trade Commission
Washington 25

October 13, 1950.

Bureau of Industry Cooperation
Division of
Trade Practice Conferences
C. C. Fraizer, Esquire,
Fraizer & Fraizer,
425 Lincoln Liberty Life Building,
Lincoln, Nebraska.

Dear Mr. Fraizer:

This will acknowledge your letter of October 10, 1950, with enclosures, addressed to Mr. Millspaugh.

146 As noted in your letter Mr. Millspaugh is presently on vacation. However, he will write you further about the matter upon his return to the office.

With appreciation of your interest and cooperation.

Sincerely yours,

E. M. HALL, JR.,
Attorney,
Rule Administration.

Respondent's Exhibit 6.

Federal Trade Commission
Washington 25

Bureau of Industry Cooperation
Division of
Trade Practice Conferences

September 6, 1951.

C. C. Fraizer, Esq.,
Fraizer & Fraizer,
425 Lincoln Liberty Life Building,
Lincoln, Nebraska.

Re: Travelers Health Association
Mail Order Insurance Rules

Dear Mr. Fraizer:

Thank you for your letter of August 30, 1951, enclosing the copies of the revised leaflet "Our Plan Explained" of the above Association.

I expect to be in the office each day during the week of September 17-21 and will be pleased as always to see you if you have an opportunity to drop in.

With appreciation of your cooperation and with best wishes,

Sincerely yours,

JAMES W. MILLSPAUGH,
Attorney,
Rule Administration

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147 **Respondent's Exhibit 7.**

Rule No. 16

Re: Advertising; Sickness And Accident Company; Maintenance File.

Sections 44-750 to 44-753 R. S. Supp., 1947, prohibits misleading and deceptive advertising. Section 44-1504 R. S. Supp., 1947, declares the circulation of various advertising materials which misrepresent policy terms, or mislead a policyholder, to be an unfair method of competition and an unfair or deceptive act and practice in the business of insurance.

To expedite the enforcement of the advertising standards enumerated in the statutes cited, the Department of Insurance deems it advisable for all sickness and accident insurance companies authorized to do business in Nebraska to maintain a file of advertising subject to inspection by this Department, therefore, It Is Ruled:

1. All insurance companies engaged in the business of sickness and accident insurance in Nebraska, shall maintain at their home office a complete file of all advertising matter used by the company in the production of sickness and accident policies, with a notation attached to each, showing the manner and extent of its dissemination. Such advertising shall be subject to periodic inspection by the Department of Insurance, State of Nebraska.

2. This ruling does not include advertising matter solely prepared and paid for by local agents.

3. Effective date of this rule—January 1, 1948.

No. 15,743.

Travelers Health Association, Petitioner,

vs.

Federal Trade Commission, Respondent.

Petition to Review Order of Federal Trade Commission.

Opinion—January 13, 1959.

C. C. Fraizer (T. J. Fraizer and Fraizer & Fraizer were with him on the brief) for Petitioner.

James E. Corkey, Assistant General Counsel, Federal Trade Commission, (Earl W. Kintner, General Counsel, and J. B. Truly, Alvin L. Berman, Edwin S. Rockefeller and Frederick H. Mayer, Attorneys, Federal Trade Commission, were with him on the brief) for Respondent.

Clarence S. Beck, Attorney General of the State of Nebraska, and Ralph D. Nelson, Assistant Attorney General of the State of Nebraska, filed brief for the State of Nebraska, as Amicus Curiae, in support of Petitioner. Joinders in the Amicus Curiae brief of the State of Nebraska with respect to the question of the jurisdiction of the Federal Trade Commission were filed by the following: Bruce Bennett, Attorney General for the State of Arkansas; John J. Bracken, Attorney General of the State of Connecticut; Richard
149 W. Ervin, Attorney General for the State of Florida; Eugene Cook, Attorney General for the State of Georgia; Norman A. Erbe, Attorney General for the State of Iowa; Jo M. Ferguson, Attorney General, and Earle V. Powell, Assistant Attorney General, for

the Commonwealth of Kentucky; Jack P. F. Gremillion, Attorney General for the State of Louisiana; Rufus D. Hayes, Commissioner of Insurance of the State of Louisiana; Frank F. Harding, Attorney General for the State of Maine; C. Ferdinand Sybert, Attorney General for the State of Maryland; Thomas M. Kavanagh, Attorney General of the State of Michigan; Fred M. Standley, Attorney General for the State of New Mexico; Louis J. Lefkowitz, Attorney General of the State of New York; Leslie R. Burgum, Attorney General for the State of North Dakota; T. C. Callison, Attorney General for the State of South Carolina; E. R. Callister, Attorney General for the State of Utah; Frederick M. Reed, Attorney General for the State of Vermont; Kenneth C. Patty, Attorney General for the Commonwealth of Virginia; Stewart G. Honeck, Attorney General of the State of Wisconsin; Thomas O. Miller, Attorney General for the State of Wyoming; Duke W. Dunbar, Attorney General of the State of Colorado.

Whitney North Seymour and Simpson, Thacher & Bartlett filed brief for The Health Insurance Association of America, as Amicus Curiae.

Before SANBORN, JOHNSEN and VOGEL, Circuit Judges.

SANBORN, Circuit Judge.

Travelers Health Association, of Omaha, Nebraska, by a petition to review, challenges the validity of a
150 cease and desist order of the Federal Trade Commission dated December 20, 1956. The order was based upon a determination by the Commission (1) that it had jurisdiction to regulate the advertising practices of the petitioner in the promotion and sale, by mail, of insurance against disability caused by sickness, and (2) that certain of the petitioner's practices were false, misleading and deceptive within the meaning of the Federal Trade Commission Act, 15 U.S.C. § 45, 15 U.S.C.A. § 45. The order under review prohibited the petitioner from carrying

on the practices found by the Commission to be unlawful.

The petitioner contended before the Commission, and contends here: 1. That the Commission was precluded by the McCarran-Ferguson Act, 15 U.S.C. § 1011-1015, 15 U.S.C.A. § 1011-1015, from regulating the advertising practices of the petitioner, since its insurance business was subject to State laws "which relate to the regulation * * * of such business."[1] 2. That none of the advertising practices proscribed by the Commission was false, misleading or deceptive.

The case was first argued and submitted to this Court on November 13, 1957. Decision was deferred pend-
151 ing the disposition by the Supreme Court of the cases of *The American Hospital and Life Insurance Co.* v. *Federal Trade Commission*, 5 Cir., 243 F.2d 719, and *National Casualty Company* v. *Federal Trade Commission*, 6 Cir., 245 F.2d 883, to review which the Supreme Court granted certiorari on November 12, 1957. 355 U.S. 867. In those cases it was held by the respective Courts of Appeals that, because of the McCarran-Ferguson Act, the Federal Trade Commission had exceeded its jurisdiction in attempting to regulate the advertising practices of the insurers there involved. A reversal of those decisions would have settled the problem of the Commission's jujrisdiction in its favor in the instant case. However, on June 30, 1958, the Supreme Court, in a Per Curiam opinion, affirmed the judgments in both cases. *Federal Trade Commission* v. *National Casualty Co.*, and *Federal Trade Commission* v. *American Hospital and Life Insurance Co.*,

[1] The pertinent portions of the McCarran-Ferguson Act, 59 Stat. 33, as amended, 61 Stat. 448, are as follows:

"That the Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

"Sec. 2 (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business.

"(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose or regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Sherman Act, * * * the Clayton Act, and * * * the Federal Trade Commission Act * * * shall be applicable to the business of insurance to the extent that such business is not regulated by State law."

357 U.S. 560, 78 S.Ct. 1260. In its opinion, the Supreme Court said of the McCarran-Ferguson Act (pages 562-563 of 357 U. S.):

> "* * * An examination of that statute and its legislative history establishes that the Act withdrew from the Federal Trade Commission the authority to regulate respondents' [the insurers'] advertising practices in those States which are regulating those practices under their own laws."

At our direction, the question of the Commission's jurisdiction over the advertising practices of the petitioner in the instant case was reargued and the case finally submitted on September 13, 1958.

The obvious purpose of the McCarran-Ferguson Act was to remove the cloud cast by the case of *United States* v. *South-Eastern Underwriters Association*, 322 U.S. 538, upon the right of the States to continue to regulate
152 and to tax interstate insurance business under their own laws, as they had done for some seventy-five years. The history and effect of the Act has already been adequately explained. See *Prudential Insurance Co.* v. *Benjamin*, 328 U.S. 408, 429-431; *Maryland Casualty Co.* v. *Cushing*, 347 U.S. 409, 413; *North Little Rock Transportation Co., Inc.* v. *Casualty Reciprocal Exchange*, 8 Cir., 181 F.2d 174, 176; *American Hospital and Life Ins. Co.* v. *Federal Trade Commission*, 5 Cir., 243 F.2d 719; *National Casualty Co.* v. *Federal Trade Commission*, 6 Cir., 245 F.2d 883, 887-888; *Securities and Exchange Commission* v. *Variable Annuity Life Ins. Co. of America*, D.C. D.C., 155 F.Supp. 521, 527.

The petitioner asserts that its insurance business, including its advertising practices, is regulated by State law within the meaning of the McCarran-Ferguson Act, and that, under Section 2 (a) and (b) of the Act, the Commission is clearly without authority to do any additional or supplemental regulating of petitioner's advertising practices.

The Federal Trade Commission contends that the Supreme Court, in its decision of June 30, 1958, in the *National Casualty Co.* and *American Hospital and Life In-*

surance Co. cases, merely held that the States possess ample means to regulate insurance advertising disseminated by companies licensed to do business in those States and represented by agents located within their boundaries; that the Court expressly refrained from ruling upon the applicability of the McCarran-Ferguson Act to the mail order insurance business; that no amount of State regulation of insurance advertising can effectively stop the influx into a State of deceptive advertising material mailed by an out of State company doing a mail order
153 insurance business; that, under the proviso of Section 2 (b) of the McCarran-Ferguson Act, the Federal Trade Commission Act is applicable to the petitioner's advertising practices; and that the Commission has jurisdiction.

The Supreme Court, in its opinion of June 30, 1958, in the *National Casualty Co.* and *American Hospital and Life Insurance Co.* cases, decided no more than it was required to decide, and confined its opinion to the exact factual situation presented. That court, as the Commission says, was dealing with the advertising practices of insurers operating through agents in States in which the insurers were licensed. In the instant case the petitioner is licensed only in the States of Nebraska and Virginia. It sends letters soliciting insurance by mail throughout the United States. It has policyholders in every State in the Union, and all of its business is transacted through the mail at its home office in Omaha. It pays taxes to Virginia on premiums collected from its insureds in that State, but pays all other premium taxes to Nebraska. Since its incorporation in 1904, the petitioner has been supervised, regulated and periodically examined by the Insurance Department of the State of Nebraska. That the laws of that State are adequate to enable the Nebraska Insurance Department to deal effectively with any unfair advertising practice of the petitioner or of any other insurer domiciled in that State cannot be questioned.

The Nebraska "Unfair Competition and Trade Practices" Act of 1947 (Secs. 44-1501 to 44-1521, Revised Statutes of Nebraska 1943, Reissue 1952) as amended in 1957 (Secs. 44-1501 et. seq., Revised Statutes of Nebraska 1943,

1957 Cumulative Supplement) expressly prohibits an insurer domiciled in that State from engaging there or elsewhere in any "unfair or deceptive acts and prac-
154 tices in the conduct of the business of insurance." (§ 44-1503.) The Act empowers the Director of Insurance (1) to prefer charges against any such insurer if he has reason to believe that it has, in Nebraska or elsewhere, engaged "in any unfair or deceptive acts or practices in the conduct of such business," and to give the insurer notice of a hearing on the charges (§ 44-1506); (2) to take evidence at the hearing (§ 44-1507); and (3) to issue a cease and desist order if he determines that the insurer has engaged in the wrongful acts and practices with which it is charged. (§ 44-1509.)

At the time the Commission entered the order under review, the Nebraska Act did not expressly authorize the Director of Insurance to deal with unfair and deceptive trade practices engaged in, in other states, by an insurer domiciled in Nebraska. That, we think, is of no substantial consequence. The validity of the order under review depends upon the law presently applicable. A substantial change in applicable law, occurring after the entry of an order or judgment, which alters the rule governing a case will ordinarily be given effect on review. See and compare, *Trapp* v. *Metropolitan Life Insurance Co.*, 8 Cir., 70 F.2d 976, 982, and cases cited. Moreover, we think the Director of Insurance of Nebraska at all times here involved had the power to regulate the practices of the petitioner in the solicitation of insurance in Nebraska and other states.

It must be kept in mind that the business of the petitioner was all done at or from its home office in Omaha. There its solicitation material originated and was mailed; there the applications for insurance induced by solicitation were received; there all policy contracts were written; and there all premiums were paid. With every activity of the petitioner, in the conduct of its business, subject
155 to the supervision and control of the Director of Insurance of Nebraska, we think that the petitioner's practices in the solicitation of insurance by mail in Nebraska or elsewhere reasonably and realistically cannot be held to be unregulated by State law.

In our opinion, there is no controlling distinction between the instant case and the *National Casualty Co.* and

American Hospital and Life Insurance Co. cases. We think that the advertising practices of the petitioner are regulated by State law within the letter and spirit of the McCarran-Ferguson Act, and that the Act has placed such practices beyond the regulatory power of the Commission.

The order under review is vacated on the ground that the Federal Trade Commission is, and was, without authority to regulate the practices of the petitioner in soliciting insurance.

VOGEL, Circuit Judge, dissenting.

I do not dispute the majority's contention that "A substantial change in applicable law, occurring after the entry of an order or judgment, which alters the rule governing a case will ordinarily be given effect on review", but I do not believe here that the after-the-fact amendment of the Nebraska Code to include deceptive practices "in any other state" is the kind of regulation by state law Congress had in mind. To force the citizens of other states to rely upon Nebraska's regulation of the long distance advertising practices of the petitioner in the promotion and sale by mail or otherwise of insurance outside the State of Nebraska seems to me impractical and ineffective. This is much too frail a reed upon which to lean. The petitioner's
156 mail order business is not regulated and cannot be regulated by the laws of the states whose citizens are subjected to the mail disseminated advertising. I believe the order of the Federal Trade Commission falls squarely within the purview of the Section 2(b) proviso of the McCarran-Ferguson Act and should be sustained.

157 In United States Court of Appeals

for the

Eighth Circuit

No. 15743—September Term, 1958.

Travelers Health Association,

Petitioner,

vs.

Federal Trade Commission.

Petition to Review Order of the Federal Trade Commission.

Judgment—January 13, 1959

This cause came on to be heard on the Petition to Review the Order of the Federal Trade Commission entered December 20th, 1956, and was argued by counsel.

On Consideration Whereof, It is now here Ordered and Adjudged by this Court that the said Order of the Federal Trade Commission under review in this cause be, and is hereby, vacated on the ground that the Federal Trade Commission is, and was, without authority to regulate the practices of the petitioner in soliciting insurance.

And it is further Ordered by this Court that this cause be, and it is hereby, remanded to the Commission for proceedings consistent with the majority opinion of this Court this day filed herein.

January 13, 1959.

158 Clerk's Certificate to foregoing transcript omitted in printing.

159 Supreme Court of the United States

(Title omitted.)

Order allowing certiorari. May 18, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE 1959—816910/P. O. 177